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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

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No. 278

JAMES P. MITCHELL, SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT OF LABOR,  
PETITIONER,

VS.

JOSEPH T. BUDD, JR., AND FLORENCE W. BUDD,  
CO-PARTNERS, DOING BUSINESS AS J. T. BUDD,  
JR., AND COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1955

CERTIORARI GRANTED OCTOBER 17, 1955

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(CLERK'S NOTE—The petition for writ of certiorari in this case seeks a review of separate judgments of U.S.C.A., 5th, entered on separate records in each of two cases, pleadings in which are materially different. For that reason, separate records have been printed.)

In United States District Court for the Northern District of  
Florida, Tallahassee Division

Civil Action No. 305

MAURICE J. TOBIN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PLAINTIFF

*versus*

JOSEPH T. BUDD, JR., AND FLORENCE W. BUDD, CO-PARTNERS, DOING  
BUSINESS AS J. T. BUDD, JR. AND COMPANY, DEFENDANTS

COMPLAINT—Filed February 19, 1951

I  
Plaintiff brings this action to enjoin defendants from violating the provisions of Section 15(a) (1), 15(a) (5) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C. Title 29, Sec. 201, et seq.), as amended by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Public Law 393, 81st Cong., 1st Sess., 63 Stat. 910), hereinafter called the Act.

II

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act.

III

2 The Defendants, Joseph T. Budd, Jr. and Florence W. Budd, both reside in the City of Quincy, State of Florida, within the jurisdiction of this Court. Said defendants are partners doing business under the name and style of J. T. Budd, Jr. and Company and are, and at all times hereinafter mentioned have been, the owners and operators of a place of business and packing house located at 225 East Clark Street, Quincy, Florida, where they are engaged in the production, sale and distribution of tobacco.

IV

At all times hereinafter mentioned, defendants employed and are employing, approximately one hundred and eight (108) employees

in and about their said place of business and packing house in Quincy, Florida, in the production of tobacco for interstate commerce, within the meaning of the Act. Substantial quantities of the goods produced by these employees have been, and are being, produced for interstate commerce and have been, and are being, shipped, delivered, transported, offered for transportation and sold in interstate commerce and shipped, delivered or sold with knowledge that shipment, delivery or sale thereof in interstate commerce is intended from defendants' place of business to other states.

Defendants repeatedly have violated, and are violating, the provisions of Sections 6 and 15(a)(2) of the Act by paying to many of their employees for their employment in the production of goods for interstate commerce, as aforesaid, wages at rates less than seventy-five (75) cents an hour during the period since January 25, 1950.

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## VI

On October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11(c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of the wages, hours and other conditions and practices of employment to be made, kept and preserved by every employer subject to any provision of the Act. The said regulations and amendments thereto were published in the Federal Register and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516.

## VII

Defendants, employers subject to the provisions of the Act, repeatedly have violated, and are violating, the provisions of Sections 11(c) and 15(a)(5) of the Act in that since on or about July 1, 1948, they have failed to make, keep and preserve adequate records of their employees and the wages, hours and other conditions and practices of employment maintained by them, as required by the said regulations, in that the records kept by defendants failed to show, among other things, home addresses and occupations, with respect to many employees, and the time of day and day of week on which the employee's work-week begins.

## VIII

Defendants repeatedly have violated, and are violating, the provisions of Section 15(a)(1) of the Act in that since January 25, 1950, they have shipped, delivered, transported, offered for transportation and sold in interstate commerce and have

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shipped, delivered or sold with knowledge that shipment, delivery or sale thereof in interstate commerce was intended from their said place of business to other states, goods in the production of which many of their employees were employed in violation of Section 6 of the Act as alleged.

## IX

Defendants have repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

Wherefore, cause having been shown, plaintiff prays judgment permanently enjoining and restraining defendants, their officers, agents, servants, employees, attorneys and all persons acting, or claiming to act, in their behalf and interest from violating the provisions of Sections 15(a)(1), 15(a)(2) and 15(a)(5) of the Act, and such other and further relief as may be necessary and appropriate.

(S.) WILLIAM S. Fyson,

*Solicitor.*

Post Office address: Office of the Solicitor, U. S. Department of Labor, 1908 Commerce Building, Birmingham 3, Alabama, or  
Office of the Solicitor, U. S. Department of Labor, Peachtree-Seventh Building, Atlanta, Georgia.

(S.) BEVERLEY R. WORRELL,

*Regional Attorney.*

(S.) SYLVIA S. ELLISON,

*Attorney.*

In United States District Court

ANSWER—Filed March 22, 1951

Come now defendants, by their undersigned attorneys, and for answer to the complaint of the plaintiff allege as follows:

## I.

Answering Paragraph I, defendants deny that they are violating Section 15(a)(1), Section 15(a)(2), or Section 15(a)(5), of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, C. 676, 52 Stat. 1060; U.S.C.A. Title 29, Section 201 et seq.), as amended by the Fair Labor Standards Act of 1949, approved October 26, 1949 (Public Law 393, 81st Congress, First Session, 63 Stat. 910), hereinafter called the "Act".

6:

## II.

Defendants admit the provisions of Section 1A of the Act, but deny that they have violated the designated provisions of Sec-

tion 15 cited by the plaintiff so as to entitle plaintiff to an injunction.

### III

Defendants admit all of the allegations of Paragraph III of the complaint, except the allegation that they are engaged in the production, sale and distribution of tobacco, which they deny.

### IV

Defendants admit that there are employed approximately 108 workers in their processing plant in Quincy, Florida, but defendants deny that the workers are employed by them and allege that said workers are employed by the farmers whose names are hereinafter set out to perform purely agricultural services upon shade grown leaf tobacco as a necessary requisite for its preparation for market as an incident to agriculture, and that the defendants act solely as agents for such farmers, the complete details of which will be set forth in more complete detail in this answer.

The defendants deny that they are engaged in the production of tobacco for interstate commerce within the meaning of the Act. Defendants deny that substantial quantities of goods are produced by the alleged 108 employees (since defendants deny that the said employees produce goods in interstate commerce and deny that said employees are covered by the Act), and likewise deny that such goods have been delivered, transported, offered for transportation and sold for interstate commerce and shipped or delivered, or sold with knowledge that shipment, delivery or sale thereof is intended from defendant's place of business to other states so as to bring either the defendants or the alleged employees within the coverage of the Act. Defendants deny that the Act applies to them or to the 108 employees referred to upon either the factual situation of their employment or the type of service they perform, all of which will be specifically set forth later in this answer.

### V

Defendants deny that they have repeatedly violated and are violating the provisions of Sections 6 and 15(a)(2) of the Act by paying to many of their employees for their employment in the production of goods for interstate commerce wages at less than 75c per hour during the period since January 25, 1950. Defendants admit that the rate paid by them for the farmers hereinafter named since said date has been less than 75c an hour, but that said employees are the employees of the farmers engaged in an operation incidental to agriculture and that neither the work performed nor the employees are covered by any provision of the act or by any lawful regulation adopted under the authority thereof, all of which will



fully appear from the facts concerning the business of the defendants and work of the said 108 employees as will be later set forth in full.

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# VI

Defendants admit the allegations of Paragraph VI, but deny that they have violated any of the regulations described in said paragraph, since neither defendant nor said employees are covered by the Act.

# VII

Defendants deny that they are employers subject to the Act and therefore deny that they have violated, or that they are violating the provisions of Section 11(c) and 15(a) (5) in that they have failed to make, keep and preserve adequate records of their employees and the hours and other conditions and practices of employment maintained by them as required by the alleged regulation in that the records kept by the defendants fail to show, among other things, home addresses and occupations with respect to many employees and the time of day and the work day on which the employment work-week began.

# VIII

Defendants deny that they have repeatedly violated and are violating the provisions of Section 15(a) (1) of the Act, in that since February 15, 1950, they have shipped, delivered and transported, offered for transportation and sold for interstate commerce, or have shipped, delivered or sold with the knowledge that shipment, delivery or sale thereof in interstate was intended from their said place of business to other states, the goods and the production of which many of their employees were employed in violation of Section 6 of the Act as alleged, since defendants deny that either they or their alleged employees are covered by the Act.

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# IX

Defendants deny that they have repeatedly violated provisions of the Act specified in the complaint. Defendants further deny that a judgment enjoining and restraining alleged violations set forth in the complaint is authorized by Section 17 of the Act.

# X

For further answer to the plaintiff's Bill of Complaint the defendants allege as follows:

1. That United States Type 62 tobacco is a leaf tobacco grown and used exclusively for cigar wrappers, and the only place in the world where this particular tobacco is grown extensively and suc-



essfully is in two limited, small compact areas, one of which is in Madison County, Florida, and which constitutes a separate and distinct area of production for such tobacco, and the other of which consists of Decatur and Grady Counties, Georgia, and Gadsden and Leon County, Florida. All the latter counties are contiguous, and the Type 62 tobacco grown in said counties is grown within an air line radius of 30 miles of the town of Quincy, in Gadsden County, Florida. All of the tobacco grown in Madison County, Florida, is packed in said county, and therefore, it is a separate area of production from the Quincy area, and to avoid confusion, for the purpose of this answer, it will be disregarded, although what is said herein with reference to unreasonableness of the administrator's definition of area of production as applied to the Quincy area of production is equally applicable to Madison County, Florida. A copy of the definition of the Administrator of "Area of Production" is attached hereto marked Appendix I.

2. Type 62 tobacco requires peculiar, special and painstaking cultivation, curing, and preparation for market. It is grown in fields enclosed with a cheesecloth shade which completely covers and encloses the tobacco field. The shade cloth is supported by wires strung on posts placed at regular intervals throughout the field. When each leaf of tobacco reaches a certain state of maturity it must immediately be harvested. This harvesting process is known and described as "priming". The lower leaves are first picked, perhaps two or three from each tobacco stalk. This picking is repeated as the tobacco matures on up the stalk until the operation has been repeated six or seven times. The picking is designated as first primings or sand leaves, second primings, third primings, and so on. At each priming, the tobacco is immediately taken into a tobacco barn, located on the farm, where it is strung on sticks and dried by means of heat. The tobacco is completely or almost completely dried then permitted to absorb moisture and again dried. The drying process is repeated until the tobacco has reached an appropriate stage in the process of curing. There may be several primings in a single barn at one time, but as each priming reaches the appropriate stage of maturity, it must immediately be packed in boxes and taken to the processing warehouse to be processed and prepared for market as hereinafter described. Unless the tobacco is immediately processed as hereinafter outlined, it will spot, spoil, or deteriorate and become valueless for cigar wrappers.

3. From the tobacco barns tobacco must be promptly taken to the packing or processing warehouse where it is placed in piles, known as bulks, consisting of and requiring from 3,500 to 4,500 pounds of tobacco, as any lesser amount will not generate and retain sufficient heat for the sweating process. At this stage the tobacco has absorbed a sufficient amount of water so that ferment-

tation begins and a sweating process takes place and a natural heat created. During this stage the temperature within the bulk is closely watched and observed each day and from six to eight days thereafter, depending upon the temperature rise, the bulk is turned; that is to say, the bulk is broken up, the tobacco shaken out, the tobacco on the outside is placed on the inside, that on the top is placed on the bottom, and vice versa, until through this sweating or process of fermentation the tobacco is in a condition in which it may be handled or worked. At this stage the tobacco is then separated, graded, kased (sprayed with water) and again placed in bulks where the sweating and fermentation processes and the turning of the bulk continues until such time as the tobacco is in a condition to be baled and ready for market. In all of this processing, nothing is added to or taken from the tobacco except through the natural processes of evaporation and fermentation. Any delay in the continuity of the process from the time the tobacco is picked from the stalk or "primed" as above indicated, until it is baled is dangerously likely to result in such damage to or deterioration of the tobacco as to make it unsalable as cigar wrapper tobacco.

4. That the bulking and processing as above outlined, to be successfully, efficiently and economically carried out requires a tremendous amount of valuable and expensive equipment, including a steam heated packing house equipped with humidifying sprays, bulking platforms, kasing machinery and sprays, thermometers and thermometer tubes, bulk covers, baling boxes and presses, wax paper, baling mats, packing, sorting, and grading tables, and, above all, the ability and knowledge of the process gained only through experience. All of which cannot economically be owned or had except by farmers owning and growing at least 100 acres of tobacco a year or more.

5. In the Quincy area of production there are approximately 300 farmers growing Type 62 tobacco of which 80 per cent grow less than 25 acres per year, and the majority of which grow from 10 to 100 acres per year. As alleged above, approximately 4,000 pounds of tobacco are required to form an adequate bulk for the sweating of tobacco. Assuming a farmer to possess the necessary equipment, knowledge and the trained personnel to process his own tobacco, it would require the tobacco from at least 65 acres to form an adequate bulk of each priming. Thus, it is imperative that the smaller farmer utilize the services and facilities of an established processing plant or packing house in order that his tobacco may be prepared for market.

6. The town of Quincy, Florida, has grown up around, is supported by, and exists solely by virtue of the agriculture in the surrounding community. The principal, and almost sole source of in-

13 come to the town of Quincy is from the raising of Type 62 tobacco. Except for one sawmill and Fuller's Earth Mining operation, there are no industries or businesses in Gadsden County which do not have their roots in tobacco farming and other agricultural activities. Population of the town of Quincy, according to the 1950 United States census is 6,586. The growing of United States Type 62 tobacco and the processing or packing of this tobacco are complementary seasonal operations; that is to say, during the first half of the year the tobacco is being grown and during the latter half of the year it is being processed and prepared for market. The labor for both operations is drawn from the same labor source almost exclusively. The workers who are engaged in the processing and preparation of the tobacco for market is the same labor which grows it on the farms. This farm labor, for the most part, lives all year round on the various farms in tenant houses furnished rent free by the owner of the farm. In addition to the house, this labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of livestock. Transportation is furnished them to and from their places of work. Those living in Quincy are transported to the farms during the farming season, and those living on the farms are transported to the packing houses during packing season. To all intents and purposes the farm labor and the packing house labor in the Quincy area are identical.

7. Under Section 13(A)(10) of the Fair Labor Standards Act, Congress specifically exempted from the operation of said act, any individual employed within the area of production (as defined by the administrator) employed in the handling, packing, storing, 14 compressing, drying, or preparing in their raw or natural state of agricultural or horticultural commodities for market. In authorizing the administrator to define the area of production, it was contemplated by Congress that a practical and realistic definition of area of production would be prescribed by the administrator which would carry out the intent of Congress to exempt from the operation of the act any employee employed in agriculture, including farming in all its branches, and any practices performed by a farmer as incident to or in conjunction with farming operations, including preparation for market and thereby avoid the impact of the minimum wage and hour provisions on farm labor.

8. The administrator has by his definition of area of production, as applied to tobacco, excluded any processing plant and the employees thereof from such area of production, if the same be located within one mile of a town with a population of 2,500 and not more than 50,000; such definition as applied to the facts hereinabove alleged, is capricious, arbitrary, not based on logic or reason, not within the authority contemplated by the act and is, therefore, un-

reasonable and illegal. As a matter of fact, and reason, and within the meaning and intent of the act, the packing house of these defendants is located within the area of production of the tobacco processed therein, and, therefore, these defendants and their employees are exempt from the operation of the act. As a result of this, there has been created a confused economy and the economic anomaly whereby employees at one packing house are held to be covered by the act while the same persons doing the identical work in a packing house a few blocks away are held not to be covered.

15      An even more ridiculous situation exists where an employer is a grower who packs his own tobacco and also the tobacco of other growers and is required to comply with the act as to the employees who work in one packing house and not those who are employed in another. The arbitrary, capricious, illegal, invalid and unconstitutional definition by the administrator of the term "area of production" as applied to type 62 shade grown leaf tobacco (if applied as the plaintiff contends), results in the tobacco of the small farmer being saddle with an extra twenty-five cents per hour for processing labor, thus causing it to move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those fortunate enough to own their own processing plants, and whose labor for processing is specifically exempt from the provisions of the act.

## XI

For further answer to the plaintiff's Bill of Complaint, these defendants allege as follows:

1. That they have not nor have they through their employees or by any one employed by them engaged in the production, sale or distribution of tobacco, but allege that any and all tobacco processed in the packing house of the defendants for the years 1950 and 1951 has been processed by the particular farmer owning such tobacco under several contracts with the defendants, said contracts being with the following named farmers who grow the number of acres listed opposite their respective names, as follows:

Name—Address	No. of Acres
C. C. Duke, Fowlestown, Ga. ....	6
T. W. Fletcher, Rt. 3, Quincy, Fla. ....	12
Gregory Brothers, Havana, Fla. ....	13
Glenn Griffith, Calvary, Georgia. ....	7
A. M. Haire, Greensboro, Fla. ....	3
Carl Haire, Greensboro, Fla. ....	4
Drew Haire, Gretna, Fla. ....	8
P. J. Hammett, Cairo, Ga. ....	2
Leo Harrison, Whigham, Ga. ....	3

Name—Address	No. of Acres
G. J. Hires, Greensboro, Fla.	5
A. E. Hopkins, Calvary, Ga.	1 1 2
M. J. Johnson, Rt. 3, Cairo, Ga.	3
Jones & Watson, Whigham, Ga.	1
W. C. Jones, Whigham, Ga.	5
Rubin Jordan, Rt. 3, Quincy, Fla.	1 1 2
Glover Kemp, Havana, Fla.	1 2 10
Ellis Maxwell, Rt. 3, Cairo, Ga.	1
G. A. Maxwell, Calvary, Ga.	2
Jack McFarlin, Quincy, Fla.	7
H. L. McKeown, Quincy, Fla.	10
Lige McMillan, Chattahoochee, Florida	3
F. W. McNair, Whigham, Ga.	1
Joe McNair (White), Calvary, Ga.	1
Joe McNair (Colored), Havana, Fla.	2
Raymond Poppell, Concord, Fla.	2
L. O. Rahberg, Cairo, Ga.	1 1 4
O. W. Rowan, Greensboro, Fla.	1
J. G. Rudd, Quincy, Fla.	3
Tyler Sanders, Route 3, Quincy	2
Jeff Shelfer, Quincy, Fla.	30
Charles B. Smith, Havana, Fla.	3
John B. Smith, RD, Quincy, Fla.	2 1 2

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W. B. Smith, Havana, Fla.	3 3 4
Spooner Farms, Greensboro (Murray Spooner)	20
Howard Suber, Quincy	6
Marvin Suber, Rt. 3, Quincy	7 1 2
Worth Suber, RD, Quincy	10
W. T. Suber, Jr., RD, Quincy	5
Geo. C. Thomas, Jr., Cairo, Ga.	3
C. F. Vanlandingham, Greensboro	3
C. D. Vickers, Whigham, Ga.	2
C. T. Williams, Calvary, Ga.	3
A. M. Womack, Havana	9

52 farmers—Acres 263 2 10

Each of said farmers has executed a contract with the defendants for the processing of their 1950 tobacco crop, a specimen copy of which contract is hereto attached and marked Appendix 2, and by this reference thereto hereby made a part hereof.

2. That said tobacco is not salable or marketable until the process and treatment as outlined in Paragraph X hereinabove is completed. Defendants allege that from time to time as the tobacco of each particular farmer is delivered to the defendants' warehouse in Quincy for processing, an accurate record upon an



hourly or proportionate basis was kept, and the amount of time and expense accruing as a result of the processing of the tobacco of each farmer is kept and the exact cost of such processing charged to such farmer, and an account thereof made available to him. As said tobacco was and is delivered by the farmer for processing, it

18 was and is divided into various primings and kept separate in the bulks by partitioning the different crops, primings, and owners with straps so that each farmer's tobacco can be identified at any time during the entire processing period while said tobacco is in the defendant's warehouse. After the processing has been completed, the tobacco is reported for sale under the control of the farmer; he may himself sell it or have it sold by the defendants for a commission; he has the right to accept or reject any offers as are made for it, or to make such sale to such buyers as he chooses or have the same sold in his behalf.

3. That the procedure outlined hereinabove constitutes a practice performed by a farmer as an incident to and in conjunction with his farming operations including preparation for market, delivery to storage or to market, and that under Section 13(a) (6) and Section 3(f) of the Fair Labor Standards Act, such operation and the employees engaged therein are exempt from the coverage of the act.

Defendants, therefore, of this Court humbly pray that it take jurisdiction of this cause, that it take such evidence as will be necessary to the issues raised by the complaint and this answer and that upon a final hearing it enter a final decree dismissing the complaint filed herein by plaintiff.

Respectfully submitted,

(S.) JULIUS F. PARKER,

Of CALDWELL, PARKER, FOSTER & WIGGINTON,

*Attorneys for Defendants.*



## APPENDIX I TO ANSWER

## Title 29, Chapter V

## Code of Federal Regulations

## Part 536

## Regulations Defining Area of Production

Pursuant to Section 7(c) and Section 13(a)(10) of the Fair Labor Standards Act of 1938

As Amended December 1946

Department of Labor

United States of America

United States Department of Labor

Wage and Hour Division

Title 29—Labor

## Chapter V—Wage and Hour Division

Department of Labor

Part 536—Area of Production

## Definition of "Area of Production"

This regulation defines the "area of production" for purposes of and pursuant to sections 7(c) and 13(a)(10) of the Fair Labor Standards Act, and in accordance with the order of the United States Supreme Court in the case of Addison et al., v. Holly Hill Fruit Products, Inc. (322 U.S. 607). The Court in the Holly Hill case called for "delimitation of territory in relation to the complicated economic factors that operate between agricultural labor conditions and the labor market of enterprises concerned with agricultural commodities and more or less near their production." In referring to the legislative history of the act, the Court stated that Congress also had in mind differences between rural communities and urban centers.

In order properly to assess all the factors relevant to the determination of an appropriate definition, studies were undertaken by the Economics Branch of the Wage and Hour Division as a basis for promulgating a definition in accordance with the decision of the Court. Numerous conferences were held throughout the country with representatives of labor and of the industries involved. Voluminous

1 Secs. 536.1 through 536.3 issued under the authority contained in secs. 7(c) and 13(a)(10), 52 Stat. 1063, 1067; 29 U.S.C. 207(c), 213(a)(10).

economic data from every available source were assembled and analyzed by the Division.

Six hearings with respect to proposed definitions of the "area of production" were held during 1944 and 1945 covering the industries concerned with: (1) Fresh fruits and vegetables; (2) cotton; (3) tobacco; (4) grain/seeds, dry edible beans, and dry edible peas; (5) dairy products, poultry and eggs, and (6) miscellaneous agricultural and horticultural commodities not covered by other hearing. All parties appearing at the hearings were given an opportunity to be heard, to question witnesses and to file briefs and additional statements subsequent to the hearings. Distance and population criteria formed the basis for substantially all of the definitions proposed at the hearings.

Among the factors considered in the formulation of the definition were: practices of marketing; the distances between farms and the enterprises carrying on the operations described in sections 7(c) and 13(a) of the act; the kind of crop; the pattern of concentration of agricultural production with respect to the location of the establishments; the practices prevailing in a single as distinguished from a diversified crop area; geography; topography; population; the correlation between population and the character of the community as rural-agricultural or urban-industrial; urban-rural distinctions made by the Supreme Court in the Holly Hill case, by the Congress and by other agencies; the influence of urban community in the immediately surrounding area; and all other available information relating to the problem.

Based on the purpose and language of the statute, the data and arguments presented at conferences and hearings, the experience of the Division in administering the act, and full consideration of the factors enumerated herein and all other relevant matter, the Administrator has concluded that the most appropriate definition within the legal limitations is one which, taking into account all the foregoing considerations, delimits a geographical area, located in the open country or in a rural community, and measured, for each establishment, by a radius expressed in miles.

These conclusions have been incorporated into, and form the basis of, the definitions of "area of production" contained in this revised regulation:

Section 536.1 "Area of production" as used in section 7(c) of the

#### Fair Labor Standards Act.

(a) An employer shall be regarded as engaged in the first processing of any agricultural or horticultural commodity (other than Puerto Rican leaf tobacco) during seasonal operations within the "Area of production" within the meaning of section 7(c) if he is so

received in an establishment which is located in the open country or in a rural community and in which such first processing is performed on commodities 95 percent of which come from normal rural sources of supply located not more than the following air-line distances from the establishment:

- (1) With respect to grain, soybeans, eggs, or tobacco—50 miles;
- (2) With respect to any other agricultural or horticultural commodities—20 miles.

(b) For the purposes of this section:

(1) "Open country or rural community" shall not include any city, town or urban place of 2,500 or greater population or any area within:

- (i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000 or
- (ii) Three air-line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000 or
- (iii) Five air-line miles of any city with a population of 500,000 or greater according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the agricultural or horticultural commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for 2 workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume, or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(Sec. 536.1, as amended, approved by the Administrator December 18, 1946; published in the Federal Register December 25, 1946, 11 F.R. 14648.)

Section 536.2 "Area of production" as used in section 13(a)(10) of the Fair Labor Standards Act.

(a) An individual shall be regarded as employed in the "area of production" within the meaning of section 13(a)(10) in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market or in making cheese or butter or other dairy products:

(1) If the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply located not more than the following air-line distances from the establishment:

(i) With respect to the ginning of cotton—10 miles;

(ii) With respect to operations on fresh fruits and vegetables—15 miles;

(iii) With respect to the storing of cotton and any operations on commodities not otherwise specified in this subsection—20 miles;

26 (iv) With respect to the compressing and compress-warehousing of cotton and operations on tobacco (other than Puerto Rican leaf tobacco), grain, soybeans, poultry or eggs—50 miles; or

(2) With respect to Puerto Rican leaf tobacco, if he is engaged in piling, bulking, or otherwise handling unstripped tobacco for market in an establishment which is a first concentration point for such tobacco; provided, that employees engaged in stripping tobacco or engaged in piling, bulking, or otherwise handling stripped tobacco shall not be deemed to fall within this definition.

(b) For the purposes of this section:

(1) "Open country or rural community" shall not include any city, town, or urban place of 2,500 or greater population or any area within:

(i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000 or

(ii) Three air-line miles of any city, town or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received (i) from farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity custo-

marily moves, which are within such specified distances and located in the open country or in the rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for 2 workweeks or more, except that until such time as an establishment has operated for such a calendar month, the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(c) For the purposes of paragraph (a) (2) of this section:

"First concentration point" means a place where such tobacco is first assembled from nearby farms for such preparation for market but shall not include any establishment normally receiving a portion of the tobacco assembled from other concentration points, nor any establishment operated by a manufacturer for the preparation of tobacco for his own use in manufacturing.

(Sec. 536, as amended, approved by the Administrator December 18, 1946; published in the Federal Register December 25, 1946; 11 F. R. 14648.)

#### Section 536.3 Petition for amendment of regulations.

Any interested person or association wishing a revision of the foregoing regulations may submit in writing to the Administrator a petition for amendment thereof, setting forth the changes desired and the reasons for proposing them. If upon inspection of the petition the Administrator believes that reasonable cause for amendment of the regulations is set forth, the Administrator will either schedule a hearing with due notice to interested parties or will make other provisions for affording interested parties an opportunity to present their views either in support of or in opposition to the proposed changes.

(Sec. 536.3, as amended, approved by the Administrator March 12, 1941; effective April 1, 1941; published in the Federal Register March 18, 1941, 6 F. R. 1477.)



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## APPENDIX 2 TO ANSWER—Specimen Contract.

Mr. J. T. Budd, Jr.  
Quincy, Florida

Dear Sir:

I propose the following agreement for your acceptance:

I will rent such portion of your packing facilities as may be necessary for the preparation of my tobacco crop for market and will pay therefor the sum of \$.....

I will deliver all my 1950 crop of shade-grown tobacco to your packing house in proper case for sweating and, thereafter, employ and pay from my funds such labor as may be necessary to sweat, sort, grade and bale the tobacco and otherwise prepare the same for sale in the market.

My tobacco will not be mingled with any other tobacco. Its identity will be maintained at all times and throughout every step of its preparation. It will be insured for my account when it is delivered to the warehouse.

You are hereby given a lien upon my tobacco crop and the proceeds of any insurance thereon for the sums herein agreed to be paid by me.

Of essence in this agreement is the fact that I, through my employees and the use of rented property, will prepare my crop for market as a farm operation exempt from the provisions of the Fair Labor Standards Act.

I agree to the above and will perform in accordance with the terms of the proposal.

J. T. BUDD, JR. & Co.,  
(Not Inc.)

By .....

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## IN UNITED STATES DISTRICT COURT

AMENDED ANSWER OF DEFENDANTS—Filed May 12, 1951

Come now defendants, by their undersigned attorney, and for their amended answer to the complaint filed herein, allege as follows:

I

Answering Paragraph 1, defendants deny that they are violating Section 15(a)(1), Section 15(a)(2), or Section 15(a)(5), of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, C. 676, 52 Stat. 1060; U.S.C.A. Title 29, Section 201, et seq.), as amended by the Fair Labor Standards Act of 1949, approved October 26, 1949 (Public Law 393, 81st Congress, First Session, 63 Stat. 910), hereinafter called the "Act".



## II

Defendant admits the provisions of Section 17 of the Act, but deny that they have violated the designated provisions of Section 15 cited by the plaintiff so as to entitle plaintiff to an injunction.

## III

Defendant admit all of the allegations of Paragraph III of the complaint, except the allegation that they are engaged in the production, sale and distribution of tobacco, which they deny.

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## IV

Defendants admit that there are employed approximately 108 workers in their processing plant in Quincy, Florida, but defendants deny that the workers are employed by them and allege that said workers are employed by the farmers whose names are hereinafter set out to perform purely agricultural services upon shade grown leaf tobacco as a necessary requisite for its preparation for market as an incident to agriculture, and that the defendants act solely as agents for such farmers, the complete details of which will be set forth in more complete detail in this answer.

The defendants deny that they are engaged in the production of tobacco for interstate commerce within the meaning of the Act. Defendants deny that substantial quantities of goods are produced by the alleged 108 employees (since defendants deny that the said employees produce goods in interstate commerce and deny that said employees are covered by the Act), and likewise deny that such goods have been delivered, transported, offered for transportation and sold for interstate commerce and shipped or delivered, or sold with knowledge that shipment, delivery or sale thereof is intended from defendants' place of business to other states so as to bring either the defendants or the alleged employees within the coverage of the Act. Defendants deny that the Act applies to them or to the 108 employees referred to upon either the factual situation of their employment or the type of service they perform, all of which will be specifically set forth later in this answer.

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## V

Defendants deny that they have repeatedly violated and are violating the provisions of Section 6 and 15(a)(2) of the Act by paying to many of their employees for their employment in the production of goods for interstate commerce wages at less than 75c per hour during the period since January 25, 1950. Defendants admit that the rate paid by them for the farmers hereinafter named since said date has been less than 75c an hour, but that said em-

employees of the farmers engaged in an operation incidental to agriculture and that neither the work performed nor the employees are covered by any provision of the act or by any lawful regulation adopted under the authority thereof, all of which will fully appear from the facts concerning the business of the defendants and work of the said 108 employees as will be later set forth in full.

## VI

Defendants admit the allegations of Paragraph VI, but deny that they have violated any of the regulations described in said paragraph, since neither defendants nor said employees are covered by the Act.

## VII

Defendants deny that they are employers subject to the Act and, therefore, deny that they have violated, or that they are violating the provisions of Section 11(c) and 15(a)(5) in that they have failed to make, keep and preserve adequate records of their employees and the hours and other conditions and practices of employment maintained by them as required by the alleged regulation in that the records kept by the defendant fail to show, among other things, home addresses and occupations with respect to many employees and the time of day and the work day on which the employment work-week began.

## VIII

Defendants deny that they have repeatedly violated and are violating the provisions of Section 15(a)(1) of the Act, in that since February 15, 1950, they have shipped, delivered and transported, offered for transportation and sold for interstate commerce, or have shipped, delivered or sold with the knowledge that shipment, delivery or sale thereof in interstate commerce was intended from their said place of business to other states, the goods and the production of which many of their employees were employed in violation of Section 6 of the Act as alleged, since defendants deny that either they or their alleged employees are covered by the Act.

## IX

Defendants deny that they have repeatedly violated provisions of the Act specified in the complaint. Defendants further deny that a judgment enjoining and restraining alleged violations set forth in the complaint is authorized by Section 17 of the Act.

## X

For further answer to the plaintiff's bill of complaint, the defendants allege as follows:

1. That United States Type 62 tobacco is a leaf tobacco grown and used exclusively for cigar wrappers, and the only place  
34 in the world where this particular tobacco is grown extensively and successfully is in two limited, small compact areas, one of which is in Madison County, Florida, and which constitute a separate and distinct area of production for such tobacco, and the other of which consists of Decatur and Grady Counties, Georgia, and Gadsden and Leon Counties, Florida. All the latter counties are contiguous and Type 62 tobacco grown in said counties is grown within an air line radius of 30 miles of the town of Quincy, in Gadsden County, Florida. All of the tobacco grown in Madison County, Florida, is packed in said county, and, therefore, it is a separate area of production from the Quincy area, and to avoid confusion, for the purpose of this answer, it will be disregarded, although what is said herein with reference to unreasonableness of the administrator's definition of area of production as applied to the Quincy area of production is equally applicable to Madison County, Florida. A copy of the definition of the Administrator of "Area of Production" is attached hereto marked Appendix 1.

2. Type 62 tobacco requires peculiar, special and painstaking cultivation, curing, and preparation for market. It is grown in fields enclosed with a cheesecloth shade which completely covers and encloses the tobacco field. The shade cloth is supported by wires strung on posts placed at regular intervals throughout the field. When each leaf of tobacco reaches a certain state of maturity, it must immediately be harvested. This harvesting process is known and described as "priming". The lower leaves are first picked, perhaps two or three from each tobacco stalk. This picking is  
35 repeated as the tobacco matures on up the stalk until the operation had been repeated six or seven times. The picking is repeated as the tobacco matures on up the stalk until the operation has been repeated six or seven times. The picking is designated as first primings, or sand leaves, second primings, third primings and so on. At each priming, the tobacco is immediately taken into a tobacco barn, located on the farm, where it is strung on sticks and dried by means of heat. The tobacco is completely or almost completely dried then permitted to absorb moisture and again dried. The drying process is repeated until the tobacco has reached an appropriate stage in the process of curing. There may be several primings in a single barn at one time, but as each priming reaches the appropriate stage of maturity, it must immediately be packed in boxes and taken to the processing warehouse to be

processed and prepared for market and hereinafter described. Unless the tobacco is immediately processed as hereinafter outlined, it will spot, rot or deteriorate and become valueless for any purpose.

3. From the tobacco barns tobacco must be promptly taken to the packing or processing warehouse where it is placed in piles, known as bulks, consisting of and requiring from 3,500 to 4,500 pounds of tobacco, as any lesser amount will not generate and retain sufficient heat for the sweating process. As this stage the tobacco has absorbed a sufficient amount of water so that fermentation begins and a sweating process takes place and a natural heat created. During this stage the temperature with the bulk is closely watched and observed each day and from six to eight days thereafter, depending upon the temperature rise, the bulk is turned;

that is to say, the bulk is broken up, the tobacco shaken out, 36 the tobacco on the outside is placed on the inside, that on the top is placed on the bottom, and vice versa, until through this sweating or process of fermentation the tobacco is in a condition in which it may be handled or worked. At this stage the tobacco is then separated, graded, kased (sprayed with water) and again placed in bulks where the sweating and fermentation processes and the turning of the bulk continues until such time as the tobacco is in a condition to be baled and ready for market. In all of this handling, nothing is added to or taken from the tobacco except through the natural processes of evaporation and fermentation. Any delay in the continuity of the treatment from the time the tobacco is picked from the stalk, or "primed" as above indicated, until it is baled is dangerously likely to result in such damage or deterioration of the tobacco as to make it unsalable for any purpose.

4. That the bulking and handling as above outlined to be successfully, efficiently and economically carried out requires a tremendously large amount of valuable and expensive equipment, including a steam heated packing house equipped with humidifying sprays, bulking platforms, kasing machinery and sprays, thermometers and thermometer tubes, bulk covers, baling boxes and presses, wax paper, baling mats, packing, sorting, and grading tables, and, above all, the ability and knowledge of the process gained only through experience. All of the above cannot be economically owned or had except by farmers owning and growing at least 100 acres of tobacco a year or more.

37 5. In the Quincy area of production there are approximately 300 farmers growing Type 62 tobacco of which 80 per cent grow less than 25 acres per year, and the majority of which grow from  $1\frac{1}{2}$  to 10 acres per year. As alleged above, approximately 4,000 pounds of tobacco are required to form an adequate bulk for the sweating of tobacco. Assuming a farmer to pos-



sess the necessary equipment, knowledge and the trained personnel to process his own tobacco, it would require the tobacco from at least 65 acres to form an adequate bulk of each priming. Thus, it is imperative that the smaller farmer utilize the services and facilities of an established processing plant or packing house in order that his tobacco may be prepared for market.

6. The town of Quincy, Florida, has grown up around, is supported by and exists solely by virtue of the agriculture in the surrounding community. The principal, and almost sole source of income to the town of Quincy is from the raising of Type 62 tobacco. There are few industries or businesses of consequence in Gadsden County which do not have their roots in tobacco farming and other agricultural activities. Population of the town of Quincy, according to the 1950 United States census is 6,586. The growing of United States Type 62 tobacco and the handling or packing of this tobacco are complementary seasonal operations; that is, to say, during the first half of the year the tobacco is being grown and during the later half of the year it is being processed and prepared for market. The labor for both operations is drawn from the same labor source almost exclusively. The workers who are engaged in the processing and preparation of the tobacco for market is the same labor which grows it on the farms. This  
38 farm labor, for the most part, lives all year round on the various farms in tenant houses furnished rent free by the owner of the farm. In addition to the house, this labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of livestock. Transportation is furnished them to their places of work and return. Those living in Quincy are transported to the farms during the farming season, and those living on the farms are transported to the packing houses during packing season. To all intents and purposes the farm labor and the packing house labor in the Quincy area are identical.

7. Under Section 13(A)(10) of the Fair Labor Standards Act, Congress specifically exempted from the operation of said act, any individual employed within the area of production (as defined by the administrator) employed in the handling, packing, storing, compressing, drying, or preparing in their raw or natural state of agricultural or horticultural commodities for market. In authorizing the administrator to define the area of production, it was contemplated by Congress that a practical and realistic definition of area production would be prescribed by the administrator which would carry out the intent of Congress to exempt from the operation of the act any employee employed in agriculture, including farming in all its branches, and any practices performed by a farmer as incident to or in conjunction with farming operations,

including preparation for market and thereby avoid the impact of the minimum wage and hour provisions on farm labor.

39. 8. The administrator has by his definition of area of production, as applied to tobacco, excluded any processing plant and the employees thereof from such area of production, if the same be located within one mile of a town with a population of 2,500 and not more than 50,000; such definition as applied to the facts hereinabove alleged, is capricious, arbitrary, not based on logic or reason, not within the authority contemplated by the act and is, therefore, unreasonable and illegal. As a result of this, there has been created a confused economy and the economic anomaly whereby employees at one packing house are held to be covered by the act while the same persons doing the identical work in a packing house a few blocks away are held not to be covered. An even more ridiculous situation exists where an employer is a grower who packs his own tobacco and also the tobacco of other growers and is required to comply with the act as to the employees who work in one packing house and not those who are employed in another. As a matter of fact and reason, and within the meaning and intent of the act, the packing house of these defendants is located within the area of production to the tobacco processed therein and, therefore, these defendants and their employees are exempt from the operation of the act. The arbitrary capricious, illegal, invalid and unconstitutional definition by the administrator of the term "area of production" as applied to type 62 shade grown leaf tobacco (if applied as the plaintiff contends), results in the tobacco of the small farmer being saddled with an extra twenty-five cents per hour for processing labor, thus causing it to move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those fortunate enough to own their own processing plants, and whose labor for processing is specifically exempt from the provisions of the act.

40. 8(a). Defendants allege that during the year 1950 within one airline mile contiguous to the town of Quincy, in Gadsden County, Florida, there was actually planted, cultivated and grown more than 185 acres of U. S. Type 62 shade leaf tobacco, and that this acreage produced approximately 235,000 pounds of such tobacco. Defendants allege that the act does not authorize the administrator to define an area to be outside the area of production when in truth and in fact it actually is within the area of production, as has been alleged, and that the definition of the administrator is physically and actually untrue when applied to U. S. Type 62 shade leaf tobacco and its production in and about the town of Quincy, in Gadsden County, Florida, that his definition exceeded the authority granted to him, is violative of the purpose and intent of the act and the purpose and intent of Congress in the enactment of the act



into law so that the definition of the term, "area of production", as applied to the town of Quincy, Gadsden County, Florida, is invalid and illegal.

## XI

For further answer to the plaintiff's Bill of Complaint, these defendants allege as follows:

1. That they have not, nor have they through their employees or by any one employed by them engaged in the production, sale or distribution of tobacco, but allege that any and all tobacco processed in the packing house of the defendants for the years 1950 and 1951 has been processed by the particular farmer owning such tobacco under several contracts with the defendants, said contracts being with the following named farmers who grow the number of acres listed opposite their respective names as follows:

Name—Address	No. of Acres
C. C. Duke, Fowlstown, Ga.	6
T. W. Fletcher, Rt. 3, Quincy, Fla.	12
Gregory Brothers, Havana, Fla.	13
Glenn Griffith, Calvary, Georgia	7
A. M. Haire, Greensboro, Fla.	3
Carl Haire, Greensboro, Fla.	4
Drew Haire, Gretna, Fla.	8
P. J. Hammett, Cairo, Ga.	2
Leo Harrison, Whigham, Ga.	3
G. J. Hires, Greensboro, Fla.	5
A. F. Hopkins, Calvary, Ga.	1 1/2
M. J. Johnson, Rt. 3 Cairo, Ga.	3
Jones & Watson, Whigham, Ga.	4
W. C. Jones, Whigham, Ga.	5
Rubin Jordan, Rt. 3, Quincy, Fla.	1 1/2
Glover Kemp, Havana, Fla.	1 2/10
Ellis Maxwell, Rt. 3, Cairo, Ga.	4
G. A. Maxwell, Calvary, Ga.	2
Jack McFarlin, Quincy, Fla.	7
H. L. McKeown, Quincy, Fla.	10
Lige McMillan, Chattahoochee, Florida	3
F. W. McNair, Whigham, Ga.	1
Joe McNair (White), Calvary, Ga.	4
Joe McNair (Colored), Havana, Fla.	2
Raymond Poppell, Concord, Fla.	2
L. O. Rahberg, Cairo, Ga.	1 1/4
O. W. Rowan, Greensboro, Fla.	1
J. G. Rudd, Quincy, Fla.	3
Tyler Sanders, Route 3, Quincy	2

Name—Address	No. of Acres
Jeff Shelfer, Quincy, Fla. ....	30
Charles B. Smith, Havana, Fla. ....	3
John B. Smith, RD, Quincy, Fla. ....	2 1/2
W. B. Smith, Havana, Fla. ....	3 3/4
Spooner Farms, Greensboro (Murray Spooner) .....	20
Howard Suber, Quincy .....	6
Marvin Suber, Rt. 3, Quincy .....	7 1/2
Worth Suber, RD, Quincy .....	10
W. T. Suber, Jr., Cairo, Ga. ....	5
Geo. C. Thomas, Jr., Cairo, Ga. ....	3
C. T. Vanlandingham, Greensboro .....	3
C. D. Vickers, Whigham, Ga. ....	2
C. T. Williams, Calvary, Ga. ....	3
A. M. Womack, Havana .....	9
52 farmers .....	263 2/10 acres

Each of said farmers has executed a contract with the defendants for the processing of their 1950 tobacco crop, a specimen copy of which contract is hereto attached and marked Appendix 2, and by this reference thereto hereby made a part hereof.

2. That said tobacco is not salable or marketable until the process and treatment as outlined in Paragraph X hereinabove is completed. Defendants agree that from time to time as the tobacco of each particular farmer is delivered to the defendants' warehouse in Quincy for processing, an accurate record upon an hourly or proportionate basis was kept, and the amount of time and expense accruing as a result of the processing of the tobacco of each farmer is kept and the exact cost of such processing charged to such farmer, and an account thereof made available to him. As

43 said tobacco was and is delivered by the farmer for processing, it was and is divided into various primings and kept separate in the bales by partitioning the different crops, primings, and owners with straps so that each farmer's tobacco can be identified at any time during the entire processing period while said tobacco is in the defendants' warehouse. After the processing has been completed, the tobacco is reported for sale under the control of the farmer; he may himself sell it or have it sold by the defendants for a commission; he has the right to accept or reject any offers as are made for it, or to make such sales to such buyers as he chooses or have the same sold in his behalf.

3. That the procedure outlined hereinabove constitutes a practice performed by a farmer as an incident to and in conjunction with his farming operations including preparation for market, delivery

to storage or to market, and that under Section 13(a)(6) and Section 36(f) of the Fair Labor Standards Act, such operation and the employees engaged therein are exempt from the coverage of the act.

Defendants, therefore, of this Court humbly pray that it take jurisdiction of this cause, that it take such evidence as will be necessary to the issues raised by the complaint and this answer, and that upon a final hearing it enter a final decree dismissing the complaint filed herein by plaintiff.

Respectfully submitted,

(S.) JULIUS F. PARKER,

Of CALDWELL, POTTER, FOSTER & WIGGINTON,

*Attorneys for Defendants.*

44 Certificate of Service (omitted in printing).

#### IN UNITED STATES DISTRICT COURT

#### REQUEST FOR ADMISSION OF FACTS—Filed October 24, 1951

In accordance with the requirements of Rule 36, Federal Rules of Civil Procedure, plaintiff is hereby respectfully requested to admit in less than ten days after service of this request upon him the following facts:

1. The Type 62 tobacco is a leaf tobacco grown and used exclusively for cigar wrappers, and that the only places in the world where this tobacco is grown exclusively are two small compact areas, one of which is Madison County, Florida, (which is not involved in this litigation) and Gadsden and Leon Counties, Florida. Gadsden and Leon County are contiguous and Type 62 tobacco grown in these counties is grown within an air line mile radius to the town of

45 Quincy, Florida. All of the tobacco grown in Madison County is packed in that county and will be disregarded in this request, although the similarity between the conditions existing in Madison County, Florida, and those existing in Gadsden County, Florida, is so great that the decision in this cause will probably affect each in the same fashion.

2. That Type 62 tobacco requires special and painstaking cultivation, curing and preparation for market. It is grown in fields enclosed in a cheesecloth shade which completely covers and encloses the tobacco field. The shade cloth is supported by wires strung on posts placed at regular intervals throughout the field. When each leaf of tobacco reaches a certain state of maturity it must immediately be harvested. This harvesting process is known and described as "priming". The lower leaves are picked first, perhaps two or three from each tobacco stalk. This picking is

repeated as the tobacco matures on up the stalk until the operation has been repeated six or seven times. The picking is designated as first primings or sand leaves, second primings, third primings, and so on. At each priming, the tobacco is immediately taken into a tobacco barn located on the farm, where it is strung on sticks and dried by means of heat. The tobacco is completely, or almost completely dried, then permitted to absorb moisture and again dried. The drying process is repeated until the tobacco has reached an appropriate stage in the process of curing. There may be several primings in a single barn at one time, but as each priming reaches the appropriate stage of maturity it must immediately be packed in boxes and taken to the processing warehouse to be processed and prepared for market as hereinafter described. Unless the tobacco is immediately processed as hereinafter outlined, it will spot, 46 rot or deteriorate and become valueless for any purpose.

3. From the tobacco barns tobacco must be promptly taken to the packing or processing warehouse, where it is placed in piles known as "bulks", consisting of and requiring from 3,500 to 4,500 pounds of tobacco, as any lesser amount will not retain and generate sufficient heat for the sweating process. As this stage is reached, the tobacco has absorbed a sufficient amount of water so that fermentation begins and a sweating process takes place and a natural heat created. During this stage, the temperature within the bulks is closely watched and observed each day and from six to eight days thereafter depending upon the temperature rise (that is the temperature of the tobacco itself), the bulk is turned, that is to say, the bulk is broken up, the tobacco shaken out, the tobacco on the outside placed on the inside, that on the top is placed on the bottom, and vice versa, until through this process of fermentation the tobacco is in a condition in which it may be handled or worked. At this stage, the tobacco is then separated, graded, kased (sprayed with water) and again placed in bulks where the sweating and fermentation processes and the turning of the bulk continues until such time as the tobacco is in condition to be baled and ready for market. In all of this handling, nothing is added to or taken from the tobacco except through the natural processes of evaporation and fermentation except sprinkling with water, or "kasing". Any delay in the continuation of the treatment from the time the tobacco is picked from the stalk, or "primed", as above indicated, until it is baled is dangerously likely to result in such damage or deterioration

47 of the tobacco as to make it unsalable for any purpose. That the bulking and handling to be successfully, efficiently and economically carried out requires a tremendously large amount of valuable and expensive equipment, including a steam heated packing house equipped with humidifying sprays, bulking platforms, kasing machinery and sprays, thermometers and thermom-

eter tubes, bulk covers, baling boxes and presses, wax paper, baling mats, packing, sorting, and grading tables and, above all, the ability and knowledge of the processing, gained only through experience. All of the above cannot be economically owned or had except by farmers owning and growing at least a hundred acres of tobacco a year or more.

4. It is admitted that within 30 air line miles of Quincy, in Gadsden County, Florida, there are approximately 300 farmers growing Type 62 tobacco, of which 80% grow less than 25 acres per year, and the majority of which grow from  $1\frac{1}{2}$  to 10 acres per year, and that approximately 3,500 to 4,000 pounds of tobacco are required to form an adequate bulk for the sweating of tobacco. Assuming a farmer to possess the necessary equipment, knowledge and trained personnel to process his own tobacco, it would require the tobacco from at least acres to form an adequate bulk of each priming. The processing or handling of the tobacco requires considerable skill and experience in order to successfully do it.

5. The town of Quincy, Florida, has grown up and around, and been supported by and exists almost solely by virtue of the agricultural products grown in its surrounding community. The principal, and almost sole source of income to the town of Quincy

48. is from the raising of Type 62 tobacco. There are few industries or businesses of consequence in Gadsden County which do not have their roots in tobacco farming and other agricultural activities. The population of the town of Quincy, according to the 1950 United States census is 6,586. The growing of Type 62 tobacco and the handling or packing of this tobacco are complementary seasonal operations; that is to say, during the first half of the year the tobacco is being grown and during the latter half of the year it is being processed and prepared for market. The labor for both operations is drawn from the same labor source exclusively. That the workers who are engaged in the processing and preparation of the tobacco for market are essentially the same labor which grew it on the farms. That this same labor for the most part lives year round on the farms in tenant houses furnished rent free by the owners of the farm. In addition to the housing facilities, the labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of livestock. That transportation is furnished to them from their homes to their places of work, and return. Those living in Quincy are transported to the farms during the farming season, and those living on the farms are transported to the packing houses during packing season. That to all intents and purposes the farm labor and packing house labor in the Quincy area are identical.

6. The Administrator under the Fair Labor Standards Act has, by his definition of area of production as applied to tobacco ex-



cluded any processing plant and the employees thereof from the "area of production", if the processing plant is located within one mile of a town having a population of 2,500 and not more than 50,000. This definition as applied to Quincy has created a situation whereby employees at one packing house are held to be covered by the Act, while other persons doing the identical work in another packing house a few blocks away are held not to be covered if the packing house is owned by the farmer who grew the tobacco which is being processed. That if a farmer owns his own warehouse and processes his own tobacco that the Administrator concedes he is not covered by the Act, but if he undertakes to process the tobacco of other growers, then upon the beginning and until the completion of the processing for other growers he is contended by the Administrator to be covered by the Act. That the application by the Administrator of the term, "area of production", as applied to Type 62 shade grown leaf tobacco and the town of Quincy, Florida, results in the tobacco of the small farmer being burdened with an extra twenty-five cents per hour for processing labor and that it must move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those who own their own plants and do their processing therein.

7. That during the year 1950, within one air-line mile contiguous to Quincy, Gadsden County, Florida, (being an area within which the Administrator says is outside the area of production) there was actually planted, cultivated and grown more than 185 acres of U. S. Type 62 shade leaf tobacco, and that this acreage produced approximately 235,000 pounds of such tobacco, which was likewise processed within the town of Quincy, or one air line mile contiguous thereto.

50 8. That the defendants are paying labor engaged in the processing of tobacco in their plant or warehouse only fifty cents per hour, and that the minimum rate required by the Fair Labor Standards Act is seventy-five cents per hour.

9. That the following named farmers, who grow the number of acres of Type 62 tobacco listed opposite their names, to-wit:

Name—Address	No. of Acres
C. C. Duke, Fowlstown, Ga.	6
T. W. Fletcher, Rt. 3, Quincy, Fla.	12
Gregory Brothers, Havana, Fla.	13
Glenn Griffith, Calvary, Georgia	7
A. M. Haire, Greensboro, Fla.	3
Carl Haire, Greensboro, Fla.	4
Drew Haire, Gretna, Fla.	8
P. J. Hammett, Cairo, Ga.	2
Leo Harrison, Whigham, Ga.	3
G. J. Hires, Greensboro, Fla.	5

Name--Address	No. of Acres
A. F. Hopkins, Calvary, Ga.	1 1/2
M. J. Johnson, Rt. 3, Cairo, Ga.	3
Jones & Watson, Whigham, Ga.	4
W. C. Jones, Whigham, Ga.	5
Rubin Jordan, Rt. 3, Quincy, Fla.	1 1/2
Glover Kemp, Havana, Fla.	1 2/10
Ellis Maxwell, Calvary, Ga.	2
G. A. Maxwell, Rt. 3, Cairo, Ga.	4
Jack McFarlin, Quincy, Fla.	7
H. L. McKeown, Quincy, Fla.	10
Lige McMillan, Chattahoochee, Florida	3
F. W. McNair, Whigham, Ga.	1
Joe McNair (White), Calvary, Ga.	4
Joe McNair (Colored), Havana, Fla.	2
Raymond Poppell, Concord, Fla.	2
51-	
L. O. Rahberg, Cairo, Ga.	1 1/4
O. W. Rowan, Greensboro, Fla.	1
J. G. Rudd, Quincy, Fla.	3
Tyler Sanders, Route 3, Quincy	2
Jeff Shelfer, Quincy	30
Charles B. Smith, Havana, Fla.	3
John B. Smith, Rfd., Quincy, Fla.	2 1/2
W. B. Smith, Havana, Fla.	3 3/4
Spooner Farms, Greensboro	20
(Murray Spooner)	
Howard Suber, Greensboro	6
Marvin Suber, Rt. 3, Quincy	7 1/2
Worth Suber, Quincy	10
W. T. Suber, Jr., Cairo, Ga.	5
Geo. C. Thomas, Jr., Cairo, Ga.	3
C. T. Vanlandingham, Greensboro	3
C. D. Vickers, Whigham	2
C. T. Williams, Calvary, Ga.	3
A. M. Wornack, Havana	9
52 farmers	263 2/10

did execute a contract with the defendants for the processing of their 1950 tobacco crop and will execute similar contract for their 1951 tobacco crop and that a copy of the contract which is attached to the answer of the defendants, marked Appendix 2, is a true and exact copy of the contracts executed by said farmers with the defendants. That Type 62 shade leaf tobacco is not salable or marketable until the process and treatment outlined hereinbefore is completed. From time to time as the tobacco of each farmer is delivered to the warehouse for processing, it is divided into various primings and kept separate in the bulks by partitioning the different

52 crops, primings and owners with straps, with an accurate record upon an hourly or proportionate basis being kept, and that a record is also kept of the amount of time and expense accruing as a result of the processing, and an account made available to the farmer. That the tobacco of each farmer can be identified at any time while it is in the warehouse of the defendants. After the processing has been completed the tobacco is reported for sale under the control of the farmer; that the tobacco may be sold by the farmer, or have it sold by the defendants for a commission. That the farmer has the right to accept or reject any offers made for it, or make such sales to such buyers as he chooses, or to have the same sold by others in his behalf.

10. The existence of Joseph T. Budd, Jr., and Florence W. Budd, co-partners doing business as J. T. Budd, Jr. and Company.

11. That there are approximately 108 workers employed during the processing season in defendants' warehouse.

CALDWELL, PARKER, FOSTER & WIGGINTON,

By (S.) JULIUS F. PARKER,

*Attorneys for Defendants.*

53 Certificate of Service (omitted in printing)

# IN UNITED STATES DISTRICT COURT

ORDER ON PRE-TRIAL CONFERENCE—November 1, 1951

This cause came before this Court for pre-trial conference, at which time the pleadings were reviewed and a general discussion of the issues involved was submitted by counsel for the respective parties to the Court. During the pre-trial conference the at-

54 torneys for defendants moved the Court to allow them to file an amendment to the request for admissions of fact, the original of which had already been served on plaintiff. The attorneys for plaintiff moved for a period of thirty days from the date of the service upon plaintiff of such amended request for admissions of fact within which to comply with Rule 36 of the Federal Rules of Civil Procedure.

Since it appears that the pleadings are not in the final form desired by parties and that an extension of time beyond the rule has been requested for plaintiff to answer the amended request for admissions of fact after it is served, and that the defendants desire to amend their answer, it is, upon consideration thereof,

Ordered, Adjudged And Decreed that defendants be, and they are hereby granted permission to file an amended answer in this cause and amended request for admissions of fact. Plaintiff, Maurice J. Tobin, is allowed thirty days from the date of the service upon his

counsel of the amended request for admissions of fact within which to comply with Rule 36 of the Federal Rules of Civil Procedure, and it is further

Ordered, Adjudged And Decreed that after the amended answer is filed and the amended request for admissions of fact has been served either party, or both, may apply to the Court for a hearing on a final pre-trial conference to determine the issues, and for such other purposes as may be consistent with Rule 16 or the Federal Rules of Civil Procedure.

55 Done And Ordered in Chambers in the Federal Courthouse in Tallahassee, Florida, this 1st day of November, A. D. 1951.

(S.) DOZIER A. DEVANE,  
District Judge.

### IN UNITED STATES DISTRICT COURT

SECOND AMENDED ANSWER—Filed November 1, 1951

Come now defendants, by their undersigned attorneys, and for their second amended answer to the complaint filed herein, allege as follows:

1. Answering Paragraph I; defendants deny that they are violating Section 15(a)(1), Section 15(a)(2), or Section 15(a)(3) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, C. 676, 52 Stat. 1060; USCA Title 29, Section 201, et seq.), as amended by the Fair Labor Standards Act of 1949, approved October 26, 1949 (Public Law 393, 81st Congress, First Session, 63 Stat. 910), hereinafter called the "Act".

2. Defendants admit the provisions of Section 17 of the Act, but deny that they have violated the designated provisions of Section 15 cited by the plaintiff so as to entitle plaintiff to an injunction.

3. Defendants admit all of the allegations of Paragraph III of the complaint, except the allegation that they are engaged  
56 in the production, sale and distribution of tobacco, which they deny.

4. Defendants admit that there are employed approximately 108 workers in their warehouse in Quincy, Florida, but defendants deny that the workers are employed by them and allege that said workers are employed by the farmers whose names are hereinafter set out to perform purely agricultural services upon shade grown leaf tobacco as a necessary requisite for its preparation for market in its raw or natural state as an incident to agriculture, and that the defendants act solely as agents for such farmers, the complete details of which will be set forth in more complete detail in this second amended answer.

Defendants deny that they are engaged in the production of tobacco for interstate commerce within the meaning of the Act. Defendants deny that substantial quantities of goods are produced by the alleged 108 employees (since defendants deny that the said employees produce goods in interstate commerce and deny that said employees are covered by the Act), and likewise deny that such goods have been delivered, transported, offered for transportation and sold for interstate commerce and shipped or delivered, or sold with knowledge that shipment, delivery or sale thereof is intended from defendants' place of business to other states so as to bring either the defendants or the alleged employees within the coverage of the Act. Defendants deny that the Act applies to them, or to the 108 employees referred to upon either the factual situation of their employment or the type of service they perform, all of which will be specifically set forth later in this amended answer.

57 5. Defendants deny that they have repeatedly violated and are violating the provisions of Section 6 and 15(a)(2) of the Act by paying to many of their employees for their employment in the production of goods for interstate commerce wages at less than 75c per hour during the period since January 25, 1950. Defendants admit that the rate paid by them for the farmers herein-after named since said date has been less than 75c an hour, but allege that said employees of the farmers engaged in an operation incidental to agriculture or in the preparation of an agricultural commodity in its raw or natural state for market, and that neither the work performed nor the employees are covered by any provision of the act or by any lawful regulation adopted under the authority thereof, all of which will fully appear from the facts concerning the business of the defendants and work of the said 108 employees as will be later set forth in full.

6. Defendants admit the allegations of Paragraph VI, but deny that they have violated any of the regulations described in said paragraph, since neither defendants nor said employees are covered by the Act.

7. Defendants deny that they are employers subject to the Act and, therefore, deny that they have violated, or that they are violating the provisions of Section 11(c) and 15(a)(5) in that they have failed to make, keep and preserve adequate records of their employees and the hours and other conditions and practices of employment maintained by them as required by the alleged regulation in that the records kept by defendants fail to show, among other things, home addresses and occupations with respect to many  
58 employees and the time of day and the work day on which the employment work-week began.

8. Defendants deny that they have repeatedly violated, and are violating the provisions of Section 15(a)(1) of the Act in that since



February 15, 1950, they have shipped, delivered and transported, offered for transportation and sold for interstate commerce, or have shipped, delivered or sold with the knowledge that shipment, delivery or sale thereof in interstate commerce was intended from their said place of business to other states, the goods and the production of which many of their employees were employed in violation of Section 6 of the Act as alleged, since defendants deny that either they or their alleged employees are covered by the Act.

9. Defendants deny that they have repeatedly violated provisions of the Act specified in the complaint. Defendants further deny that a judgment enjoining and restraining alleged violations set forth in the complaint is authorized by Section 17 of the Act.

10. Further answer plaintiff's bill of complaint, the defendants allege as follows:

1. That United States Type 62 tobacco is a leaf tobacco grown and used exclusively for cigar wrappers, and the only place in the world where this particular tobacco is grown extensively and successfully is in two limited, small compact areas, one of which is in Madison County, Florida, and which constitutes a separate and distinct area of production for such tobacco, and the other of which consists of Decatur and Grady Counties, Georgia, and Gadsden and

Leon County, Florida. All the latter counties are contiguous and Type 62 tobacco grown in said counties is grown within an airline radius of 30 miles of the town of Quincy, in Gadsden County, Florida. All of the tobacco grown in Madison County, Florida, is packed in said county, and therefore, it is a separate area of production from the Quincy area, and to avoid confusion, for the purpose of this answer, it will be disregarded, although what is said herein with reference to unreasonableness and invalidity of the administrator's definition of area of production as applied to the Quincy area of production is equally applicable to Madison County. A copy of the definition of the Administrator of "area of production" is attached hereto marked Appendix 1.

2. Type 62 tobacco requires peculiar, special and painstaking cultivation, curing, and preparation for market. It is grown in fields enclosed with a cheesecloth shade which completely covers and encloses the tobacco field. The shade cloth is supported by wires strung on posts placed at regular intervals throughout the field. When each leaf of tobacco reaches a certain state of maturity it must immediately be harvested. This harvesting process is known and described as "priming". The lower leaves are first picked, perhaps two or three from each tobacco stalk. This picking is repeated as the tobacco matures on up the stalk until the operation has been repeated six or seven times. The picking is designated as first primings or sand leaves, second primings, third primings, and so on. At each priming the tobacco is immediately taken into a

tobacco barn, located on the farm where it is strung on sticks and dried by means of heat. The tobacco is completely, or almost completely, dried, then permitted to absorb moisture and again dried. The drying process is repeated until the tobacco has reached an appropriate stage in the process of curing. There may be several primings in a single barn at one time, but as each priming reaches the appropriate stage of maturity, it must immediately be packed in boxes and taken to the warehouse to be further handled in its raw or natural state and prepared for market as hereinafter described. Unless the tobacco is immediately handled as hereinafter outlined, it will spot, rot or deteriorate and become valueless for any purpose.

3. From the tobacco barns tobacco must be promptly taken to the warehouse where it is placed in piles, known as bulks, consisting of and requiring from 3,500 to 4,500 pounds of tobacco, as any lesser amount will not generate and retain sufficient heat for the sweating process. At this stage the tobacco has absorbed a sufficient amount of water so that fermentation begins and a sweating process takes place and a natural heat created. During this stage the temperature within the bulk is closely watched and observed each day and from six to eight days thereafter, and depending upon the temperature rise, the bulk is turned; that is to say, the bulk is broken up, the tobacco shaken out, the tobacco on the outside is placed on the inside, that on the top is placed on the bottom, and vice versa, until through this natural sweating or fermentation the tobacco is in a condition in which it may be handled or worked. At this stage the tobacco is then separated, graded, kased (sprayed with water) and again placed in bulks where the sweating and fermentation processes and the turning of the bulk continues until such time as the tobacco is in a condition to be baled and ready for market. In all of this handling, nothing is added to or taken from the tobacco except through the natural processes of evaporation and fermentation. Any delay in the continuity of the treatment from the time the tobacco is picked from the stalk, or "primed" as above indicated, until it is baled is dangerously likely to result in such damage or deterioration of the tobacco as to make it unsalable for any purpose.

4. That the bulking and handling as above outlined to be successfully, efficiently and economically carried out requires a tremendously large amount of valuable and expensive equipment, including a steam heated packing house equipped with humidifying sprays, bulking platforms, kasing machinery and sprays, thermometers and thermometer tubes, bulk covers, baling-boxes and presses, wax paper, baling mats, packing, sorting, and grading table, and, above all, the ability and knowledge of the process gained only through experience. All of the above cannot be economically owned

or had except by farmers owning and growing at least 100 acres of tobacco a year or more.

5. In the Quincy area of production there are approximately 300 farmers growing Type 62 tobacco, of which 80% grow less than 25 acres per year, and the majority of which grow from 1½ to 10 acres per year. As alleged above, approximately 4,000 pounds of tobacco are required to form an adequate bulk for the sweating of tobacco. Assuming a farmer to possess the necessary equipment, knowledge and the trained personnel to prepare his own tobacco for market it would require the tobacco from at least 65  
62 acres to form an adequate bulk of each priming. Thus, it is imperative that the smaller farmer utilize the services and facilities of an established warehouse in order that his tobacco may be prepared for market.

6. The town of Quincy, Florida, has grown up around, is supported by, and exists solely by virtue of the agriculture in it and the surrounding community. The principal, and almost sole source of cash income to the town of Quincy is from the raising of Type 62 tobacco. There are few industries or businesses of consequence in Gadsden County which do not have their roots in tobacco farming and other agricultural activities. Population of the town of Quincy, according to the 1950 United States census, is 6,586. The growing of United States Type 62 tobacco and the handling or packing of this tobacco are complementary seasonal operations; that is to say, during the first half of the year the tobacco is being grown and during the latter half of the year it is being prepared for market. The labor for both operations is drawn from the same labor source almost exclusively. The workers who are engaged in the preparation of the tobacco for market is the same labor which grows it on the farms. This farm labor, for the most part, lives all year round on the various farms in tenant houses furnished rent free by the owner of the farm. In addition to the house, this labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of livestock. Transportation is furnished them to their places of work and return.

Those living in Quincy are transported to the farms during  
63 the farming season, and those living on the farms are transported to the packing houses during packing season. To all intents and purposes the farm labor and the packing house labor in the Quincy area are identical.

7. Under Section 13(A)(10) of the Fair Labor Standards Act, Congress specifically exempted from the operation of said Act, any individual employed within the area of production (as defined by the Administrator), employed in the handling, packing, storing, compressing, drying, or preparing in their raw or natural state of agricultural or horticultural commodities for market. In authorizing

the administrator to define the area of production, it was contemplated by Congress that a practical and realistic definition of area of production would be prescribed by the Administrator which would carry out the intent of Congress to exempt from the operation of the Act any employee employed in agriculture, including farming in all its branches, and any practices performed by a farmer as incident to or in conjunction with farming operations, including preparation for market and thereby avoid the impact of the minimum wage and hour provisions on farm labor.

8. The administrator has by his definition of area of production, as applied to tobacco, excluded any packing plant and the employees thereof from such area of production, if the same be located within one mile of a town with a population of 2,500 and not more than 50,000; such definition as applied to the facts hereinabove alleged, is capricious, arbitrary, not based on logic or reason, not within the authority contemplated by the Act and is, therefore, unreasonable and illegal. As a result of this, there has been created a confused economy and the economic anomaly whereby employees at one packing house are held to be covered by the act, while the same persons doing the identical work in a packing house a few blocks away are held not to be covered. An even more ridiculous situation exists where an employee is a grower who packs his own tobacco and also the tobacco of other growers and is required to comply with the act as to the employees who work in one packing house and not those who are employed in another. As a matter of fact and reason, and within the meaning and intent of the act, the packing house of these defendants is located within the area of production of the tobacco handled therein and, therefore, these defendants and their employees are exempt from the operation of the Act. The arbitrary, capricious, illegal invalid and unconstitutional definition by the Administrator of the term, "area of production" as applied to Type 62 shade grown leaf tobacco (if applied as the plaintiff contends) results in the tobacco of the small farmer being saddled with an extra twenty-five cents per hour for processing labor, thus causing it to move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those fortunate enough to own their own packing plants or warehouses, and whose labor for processing is specifically exempt from the provisions of the Act.

8. (a). Defendants allege that during the year 1950 within one airline mile contiguous to the town of Quincy, in Gadsden County, Florida, there was actually planted, cultivated and grown more than 185 acres of Type 62 shade leaf tobacco, and that this acreage produced approximately 235,000 pounds of such tobacco. Defendants allege that the Act does not authorize the Administrator to define an area to be outside the area of pro-

duction, when in truth and in fact it actually is within the area of production, as has been alleged; and that the definition of the Administrator is physically and actually untrue when applied to Type 62 shade leaf tobacco and its production in and about the town of Quincy, in Gadsden County, Florida; that his definition exceeded the authority granted to him, is violative of the purpose and intent of the act, and the purpose and intent of Congress in the enactment of the Act into law so that the definition of the term, "area of production", as applied to the town of Quincy, Gadsden County, Florida, is invalid and illegal.

8(b). Defendants allege that in the preface contained in Title 29, Chapter V, Code of Federal Regulations, Part 536, entitled Definition of Area of Production, defining the term, "Area of Production" pursuant to Section 7(c) and 13(a) (10) of the Fair Labor Standards Act of 1938, it is stated:

"Six hearings with respect to proposed definition of 'area of production' were held during 1944 and 1945 covering the industries concerned with: (1) fresh fruits and vegetables; (2) cotton; (3) tobacco; (4) grain, seeds, dry edible beans and dry edible peas; (5) dairy products, poultry and eggs; and (6) miscellaneous agricultural and horticultural commodities not covered by other hearings. All parties appearing at the hearings were given an opportunity to be heard, to question witnesses and to file briefs and additional statements subsequent to the hearings. Distance and population criteria formed the basis for substantially all of the definitions proposed at the hearings."

Defendants allege that none of the producers of U. S. Type 62 shade leaf tobacco were ever given any notice of a hearing and from lack of such notice none of said producers appeared at the hearing and presented the factual situation as it related to Gadsden County, Florida, and defendants further allege that in the preparation of the definition of the term, "area of production", as used in Section 13(a) (10) of the Fair Labor Standards Act, the Administrator did not consider any of the facts or circumstances relating to either the growth, production or preparation for market of U. S. Type 62 tobacco as it is grown, handled or prepared for market in Gadsden County, or Quincy, or Madison County, Florida, which are the only areas of production for this tobacco in America.

Defendants further allege that the American Sumatra Tobacco Corporation, in and around Quincy, and within 50 miles thereof, grows approximately 1,250,000 pounds of tobacco per year, a major portion of which is prepared in its raw or natural state for market in warehouses belonging to the American Sumatra Corporation, and which are located in the heart of the town of Quincy, but that by virtue of the provisions of Section 13(a) (6) of the Fair Labor Standards Act, the employees of American Sumatra who prepare



such tobacco for market in its raw or natural state are exempt from the provisions of the Act. Defendants likewise allege that King

Edward Tobacco Company produces several hundred thou-  
67 sand pounds of Type 62 shade leaf tobacco in Gadsden County, all of which is prepared for market in its raw or natural state in warehouses in Quincy, Gadsden County, Florida, and that such operation is likewise exempt from the Act.

Defendants likewise allege that King Edward Tobacco Company prepares in its raw or natural state for market U. S. Type 62 tobacco for other farmers who are unable to maintain warehouses and that when it processes the tobacco of other farmers, the Administrator contends that it is covered by the Act.

Defendants allege that the warehouses engaged in these operations are located within the city limits of Quincy, Florida, or one airline mile contiguous thereto; that approximately 2% of the growers of U. S. Type 62 shade leaf tobacco in Gadsden County, Florida, including American Sumatra Corporation, produced as farmers approximately 40% of this type tobacco grown in the area whose employees are exempt under the provisions of Section 13(a)(6) of the Fair Labor Standards Act; that the tobacco of said growers, therefore, enters a free and competitive market with a 25¢ per hour lower labor cost for the labor required in the warehouses for the preparation of their tobacco in its raw and natural state for market, than does the tobacco of the independent small farmers whose employees are subject to the requirements of the Act under the definition promulgated by the Administrator. Defendants allege that the result of this anomalous situation in connection with the labor that is essential and necessary for the growth and preparation for market of U. S. Type 62 tobacco in

Gadsden County, Florida, is leading towards a monopoly in  
68 the hands of a few financially independent growers and the strangulation economically of the small producers in the area and that this result is in violation of the spirit and intent of the Fair Labor Standards Act, all of which results from the arbitrary action of the Administrator in seeking to apply his definition of the term, "area of Production", as used in Section 13(a)(10) to the town of Quincy so as to exclude the town of Quincy, and one airline mile thereof from the "area of production" of U. S. Type 62 shade leaf tobacco, despite the fact that approximately 235,000 pounds of such tobacco is actually grown within those limits each year.

11. Further answering plaintiff's bill of complaint, these defendants allege:

1. That they have not nor have they through their employees or by any one employed by them engaged in the production, sale or distribution of tobacco, but allege that any and all tobacco processed

in the packing house of the defendants for the years 1950 and 1951 has been processed by the particular farmer owning such tobacco under several contracts with the defendants, said contracts being with the farmers listed on Appendix 2 of this second amended answer, who grow the number of acres listed opposite their respective names.

Each of said farmers listed on Appendix 2 has executed a contract with the defendants for the processing of their 1950 tobacco crop, a specimen copy of which contract is hereto attached and marked Appendix 3.

60 2. That said tobacco is not salable or marketable until it

has received the handling and treatment as outlined in Paragraph 16 above is completed. Defendants allege that from time to time as the tobacco of each particular farmer is delivered to the defendants' warehouse in Quincy to be prepared for market an accurate record upon an hourly or proportionate basis was kept, and the amount of time and expense accruing as a result of the handling of the tobacco of each farmer is kept and the exact cost of such handling charged to such farmer, and an account thereof made available to him. As said tobacco was and is delivered by the farmer for market preparation, it was and is divided into primings and kept separate in the bulks by partitioning the different crops, primings, and owners, with straps so that each farmer's tobacco can be identified at any time during the entire handling period while said tobacco is in the defendants' warehouse. After the handling has been completed, the tobacco is reported for sale under the control of the farmer; he may himself sell it or have it sold by the defendants for a commission; he has the right to accept or reject any offers as are made for it, or to make such sales to such buyers as he chooses, or have the same sold in his behalf.

3. That the procedure outlined hereinabove constitutes a practice performed by a farmer as an incident to and in conjunction with his farming operations including preparation for market, delivery to storage or to market, and that under Sections 13(a)(6), 13(a)(10) and Section 3(f) of the Fair Labor Standards Act, such operation and the employees engaged therein are exempt from the  
70 coverage of the Act.

Defendants, therefore, of this Court humbly pray that it take jurisdiction of this cause, that it take such evidence as will be necessary to the issues raised by the complaint and this second amended answer, and that upon a final hearing it enter a final decree dismissing the complaint hereinbefore filed by plaintiff.

Respectfully submitted,

(S) JAMES F. PARKER,

Of CALDWELL, PARKER, FOSTER & WIGGINTON,

Attorneys for Defendants.

I hereby certify that I have this day served a copy of the foregoing Second Amended Answer on Beverly R. Wozrell, Regional Attorney, Office of the Solicitor, U. S. Department of Labor, 1908 Corner Building, Birmingham 3, Alabama, and Office of the Solicitor, U. S. Department of Labor, Peachtree-Seventh Building, Atlanta, Georgia, by mail, this 1st day of November, A. D. 1951.

(S.) JULIUS F. PARKER,

OF COLDWELL, PARKER, FOSTER & WIGGINTON,

*Attorneys for Defendants.*

# 71 IN UNITED STATES DISTRICT COURT

AMENDED REQUEST FOR ADMISSION OF FACTS—Filed November 1, 1951

In accordance with the requirements of Rule 6, Federal Rules of Civil Procedure, plaintiff is hereby respectfully requested to admit in less than 30 days after service of this amended request upon him the following facts:

1. That Type 62 shade leaf tobacco is a tobacco grown and used exclusively for cigar wrappers, and that the only places in the world where this tobacco is grown exclusively are two small compact areas, one of which is Madison County, Florida, (which is not involved in this litigation) and Gadsden and Leon Counties, Florida. Gadsden and Leon County are contiguous and Type 62 tobacco grown in these counties is grown within an air line mile radius to the town of Quincy, Florida. (All of the tobacco grown in Madison County is picked in that county and will be disregarded in this request, although the similarity between the conditions existing in Madison County, Florida, and those existing in Gadsden County, Florida, is so great that the decision in this cause will probably affect each in the same fashion).

2. That Type 62 tobacco requires special and painstaking cultivation, curing and preparation for market. It is grown in fields enclosed in a cheesecloth shade which completely covers and encloses the tobacco field. The shade cloth is supported by wires strung on posts placed at regular intervals throughout the field. When each leaf of tobacco reaches a certain stage of maturity it must immediately be harvested. This harvesting process is known and described as "priming". The lower leaves are picked first, perhaps two or three from each tobacco stalk. This picking is repeated as the tobacco matures on up the stalk until the operation has been repeated six or seven times. The picking is designated as first primings or sand leaves, second primings, third primings, and so on. At each priming, the tobacco is immediately taken into a tobacco barn located on the farm, where it is strung on sticks and dried by means of heat. The tobacco is completely, or

almost completely dried, then permitted to absorb moisture and again dried. The drying process is repeated until the tobacco has reached an appropriate stage in the process of curing. There may be several primings in a single barn at one time, but as each priming reaches the appropriate stage of maturity it must immediately be packed in boxes and taken to the warehouse in its raw or natural state to be prepared for market as hereinafter described. Unless the tobacco is immediately handled as hereinafter outlined, it will spot, rot or deteriorate and become valueless for any purpose.

3. From the tobacco farms tobacco must be promptly taken to the packing warehouse, where it is placed in piles known as "bulks" consisting of and requiring from 3,500 to 4,500 pounds of tobacco. Any lesser amount will not retain and generate sufficient heat for the sweating process. At this stage is reached, the tobacco has absorbed a sufficient amount of water so that fermentation begins and a sweating takes place and a natural heat created. During this stage, the temperature within the bulks is closely watched and observed each day and from six to eight days thereafter depending upon the temperature rise (that is the temperature of the tobacco itself), the bulk is turned, that is to say, the bulk is broken up, the tobacco shaken out, the tobacco on the outside placed on the inside, that on the top is placed on the bottom, and vice versa, until by natural fermentation the tobacco is in a condition in which it may be handled or worked. At this stage, the tobacco is then separated, graded, kased (sprayed with water), and again placed in bulks where the sweating and fermentation and the turning of the bulk continues until such time as the tobacco is in condition to be baled and ready for market. In all of this handling, nothing is added to or taken from the tobacco except through the natural processes of evaporation and fermentation except sprinkling with water, or kasing. Any delay in the continuation of the treatment from the time the tobacco is picked from the stalk, or "primed" as above indicated, until it is baled is dangerously likely to result in such damage or deterioration of the tobacco as to make it unsalable for any purpose. That the bulking and handling to be successfully, efficiently and economically carried out requires a tremendously large amount of valuable and expensive equipment, including a steam heated packing house equipped with humidifying sprays, bulking platforms, kasing machinery and sprays, thermometers and thermometer tubes, bulk covers, baling boxes and presses, wax paper, baling mats, pecking, sorting and grading tables and, above all, the ability and knowledge of the handling gained only through experience. All of the above cannot be economically owned or had except by farmers owning and growing at least a hundred acres of tobacco a year, or more.

4. It is admitted that within 39 air line miles of Quincy,

in Gadsden County, Florida, there are approximately 300 farmers growing Type 62 tobacco, of which 80% grow less than 25 acres per year, and the majority of which grow from 1 1/2 to 10 acres per year, and that approximately 3,500 to 4,000 pounds of tobacco are required to form an adequate bulk for the sweating of tobacco. Assuming a farmer to possess the necessary equipment, knowledge and the trained personnel to process his own tobacco, it would require the tobacco from at least 65 acres to form an adequate bulk of each pruning. The processing or handling of the tobacco requires considerable skill and experience in order to successfully do it.

5. The town of Quincy, Florida, has grown up and around, and been supported by, and exists almost solely by virtue of the agricultural products grown in its surrounding community. The principal, and almost sole source of income to the town of Quincy is from the raising of Type 62 tobacco. There are few industries or businesses of consequence in Gadsden County which do not have their roots in tobacco farming and other agricultural activities.

6. The population of the town of Quincy, according to the 1950 United States census is 6,586.

7. The growing of Type 62 tobacco and the handling or packing of this tobacco are complementary seasonal operations; that is to say, during the first half of the year the tobacco is being grown and during the latter half of the year it is being prepared

75 for market. The labor for both operations is drawn from the same labor source almost exclusively. That the workers who are engaged in the preparation of the tobacco for market are essentially the same labor which grew it on the farms. That this same labor for the most part lives year round on the farms in tenant houses furnished rent free by the owners of the farm. In addition to the housing facilities, the labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of livestock. That transportation is furnished to them from their homes to their places of work, and return. Those living in Quincy are transported to the packing houses during packing season. That to all intents and purposes the farm labor and packing house labor in the Quincy area are identical.

8. The Administrator under the Fair Labor Standards Act has, by his definition of area of production as applied to tobacco, excluded any such packing plants and the employees thereof from the "area of production", if the plant is located within one mile of a town having a population of 2,500 and not more than 50,000. This definition, as applied to Quincy has created a situation whereby employees at one packing house are held to be covered by the Act, while other persons doing the identical work in another packing house a few blocks away are held not to be covered because of the exemption in Section 13(a)(6) of the Act if the packing house is owned by



the farmer who grew the tobacco which is being prepared for market. That if a farmer owns his own warehouse and processes his own tobacco the Administrator concedes he is not covered by the Act, but if he undertakes to prepare the tobacco of other growers, then upon the beginning, and until the completion of the work for other growers he is contended by the Administrator to be covered by the Act.

9. That the application by the Administrator of the term, "area of production", as applied to Type 62 shade grown leaf tobacco and the town of Quincy, Florida, results in the tobacco of the small farmer being burdened with an extra twenty-five cents per hour for such labor and that it must move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those who own their own plants and do their preparation of the tobacco for market therein. That the prevailing wages paid to laborers by farmers preparing their own tobacco for market in warehouses in Quincy is 50c per hour.

10. That during the year 1950, within one air line mile contiguous to Quincy, Gadsden County, Florida, (being an area within which the Administrator says is outside the area of production) there was actually planted, cultivated and grown more than 185 acres of U. S. Type 62 shade leaf tobacco, and that this acreage produced approximately 235,000 pounds of such tobacco, which was likewise prepared for market within the town of Quincy, or one air line mile contiguous thereto.

11. That the defendants are paying labor engaged in the preparation of tobacco in their plant or warehouse only 50c per hour, and that the minimum rate required by the Fair Labor Standards Act is seventy-five cents per hour.

12. That it is stated in the preface contained in Title 29, Chapter V, Code of Federal Regulations, Part 536, entitled, Definition of Area of Production, defining the term, "Area of Production", pursuant to Sections 7(c) and 13(a)(10) of the Fair Labor Standards Act of 1938, it is stated:

"Six hearings with respect to proposed definition of 'area of production' were held during 1944 and 1945 covering the industries concerned with: (1) fresh fruits and vegetables; (2) cotton; (3) tobacco; (4) grain, seeds, dry edible beans and dry edible peas; (5) dairy products, poultry and eggs; and (6) miscellaneous agricultural and horticultural commodities not covered by other hearings. All parties appearing at the hearings were given an opportunity to be heard, to question witnesses and to file briefs and additional statements subsequent to the hearings. Distance and population criteria formed the basis for substantially all of the definitions proposed at the hearings."

13. That the Administrator gave none of the producers of U. S. Type 62 tobacco any notice of a hearing on the definition of the term, "area of production". That none of said producers appeared at the hearing above referred to, nor was any evidence taken in connection with the factual situation relative to the production of tobacco in Gadsden County, Florida. That at the time of making the definition, the Administrator did not have any evidence of any kind, character or description in connection with the economic situation, or in connection with the preparation of Type 62 tobacco for market in Gadsden County, Florida.

78 14. That the American Sumatra Tobacco Corporation grows in and around Quincy, Florida, within a radius of 50 miles, approximately 1,250,000 pounds of tobacco per year and that a major portion of this tobacco is prepared in its raw or natural state for market in warehouses belonging to the American Sumatra Tobacco Corporation and that these warehouses are located in the heart of the town of Quincy, and that by virtue of the provisions of Section 13(a)(6) of the Fair Labor Standards Act the employees of American Sumatra who prepare such tobacco for market in its raw or natural state are exempt from the provisions of the Act.

15. That King Edward Tobacco Company produces several hundred thousand pounds of Type 62 shade leaf tobacco in Gadsden County, all of which is prepared for market in its raw or natural state in its warehouses in Quincy, Gadsden County, Florida, and that such operation is exempt from the provisions of the Act.

16. That King Edward Tobacco Company also prepares in its raw or natural state for market U. S. Type 62 tobacco for farmers other than itself who are unable to maintain warehouses and that the Administrator contends that when it handles the tobacco of other farmers, that operation and the employees are covered by the Act.

17. That the warehouses engaged in these operations are located within the city limits of Quincy, Florida, or one airline mile contiguous thereto; that approximately 2% of the growers of Type 62 shade leaf tobacco in Gadsden County, Florida, including

79 American Sumatra Corporation, produced as farmers approximately 40% of this type of tobacco grown in the area, and that such growers and their employees are exempt under the provisions of Section 13(a)(6) of the Act.

18. That the tobacco of the farmers above referred to enters a free and competitive market with a 25c per hour lower labor cost for the labor required for the preparation of their tobacco in its raw or natural state for market than does the tobacco of independent farmers whose employees are subject to the requirements of the Act under the definition promulgated by the Administrator.

19. That the application of the Act to the small growers who do not own warehouses saddles their tobacco with a labor cost in its final preparation in its raw or natural state for market of 25c per hour more than similar labor done on other tobacco owned by farmers who do not own their own warehouses.

20. That the following named farmers, who grow the number of acres of Type 62 tobacco listed opposite their names, to-wit:

Name—Address	No. of Acres
C. C. Duke, Fowlstown, Ga.	6
T. W. Fletcher, Rt. 3, Quincy, Fla.	12
Gregory Brothers, Havana, Fla.	13
Glenn Griffith, Calvary, Georgia	7
A. M. Haire, Greensboro, Fla.	3
Car Haire, Greensboro, Fla.	4
Drew Haire, Gretna, Fla.	8
P. J. Hammett, Cairo, Ga.	2
Leo Harrison, Whigham, Ga.	3
G. J. Hires, Greensboro, Fla.	5
A. F. Hopkins, Calvary, Ga.	1 1/2
M. J. Johnson, Rt. 3, Cairo, Ga.	3

80

Jones & Watson, Whigham, Ga.	4
W. C. Jones, Whigham, Ga.	5
Rubin Jordan, Rt. 3, Quincy, Fla.	1 1/2
Glover Kemp, Havana, Fla.	1 2/10
Ellis Maxwell, Calvary, Ga.	2
G. A. Maxwell, Rt. 3, Cairo, Ga.	4
Jack McFarlin, Quincy, Fla.	7
H. L. McKeown, Quincy, Fla.	10
Lige McMillan, Chattahoochee, Florida	3
F. W. McNair, Whigham	1
Joe McNair (Colored), Havana, Fla.	2
Joe McNair (White), Calvary, Ga.	4
Raymond Poppell, Concord, Fla.	2
L. O. Rahberg, Cairo, Ga.	1 1/4
O. W. Rowan, Greensboro, Fla.	1
J. G. Rudd, Quincy, Fla.	3
Tyler Sanders, Route 3, Quincy	2
Jeff Shelfer, Quincy	30
Charles B. Smith, Havana	3
John B. Smith, Rfd., Quincy, Fla.	2 1/2
W. B. Smith, Havana	3 3/4
Spooner Farms, Greensboro	20
(Murray Spooner)	✓
Howard Suber, Greensboro	6
Marvir Suber, Rt. 3, Quincy	7 1/2
Worth Suber, Quincy	10
W. T. Suber, Jr., Cairo, Ga.	5

Name—Address.	No. of Acres
Geo. C. Thomas, Jr., Cairo, Ga.	3
C. T. Vanlandingham, Greensboro	3
C. D. Vickers, Whigham	2
C. T. Williams, Calvary, Ga.	3
A. M. Womack, Havana	9
52 farmers	263

81 did execute a contract with the defendants for the preparation of their 1950 tobacco crop and will execute similar contracts for their 1951 tobacco crop and that a copy of the contract which is attached to the answer of the defendants, marked Appendix 2, is a true and exact copy of the contracts executed by said farmers with the defendants.

21. That type 62 shade leaf tobacco is not salable or marketable until the process and treatment outlined hereinbefore is completed. From time to time as the tobacco of each farmer is delivered to the warehouse for processing, it is divided into various primings and kept separate in the bulks by partitioning the different crops, primings and owners with straps, with an accurate record upon an hourly or proportionate basis being kept, and that a record is also kept of the amount of time and expense accruing as a result of the work done and an account made available to the farmer. That the tobacco of each farmer can be identified at any time while it is in the warehouse of the defendants. After the preparation for market has been completed, the tobacco is reported for sale under the control of the farmer; that the tobacco may be sold by the farmer, or he may have it sold by the defendants for a commission, as the farmer chooses. That the farmer has the right to accept or reject any offers made for it, or make such sales to such buyers as he chooses, or to have the same sold by others in his behalf.

22. The existence of Joseph T. Budd, Jr. and Florence W. Budd co-partners, doing business as J. T. Budd, Jr. and Company.

82 23. That there are approximately 108 workers employed during the preparation of the U. S. Type 62 tobacco in defendants' warehouse.

CALDWELL, PARKER, FOSTER & WIGGINTON;

By (S.) JULIUS F. PARKER,

Attorneys for Defendants.

Certificate of Service committed in printing.

RESPONSE TO REQUEST FOR ADMISSIONS—Filed December 3, 1954

Now comes the Plaintiff reserving all pertinent objections to admissibility which may be interposed at the trial, and in answer to the defendants' request for admissions heretofore on the 1st day of November, 1951, served in the above stated matter says:

1. Plaintiff admits United States Department of Agriculture Circular No. 249, entitled American Tobacco Types, Uses and Markets states that type 62 shade leaf tobacco, a tobacco grown and used principally for cigar wrappers, is grown in North-Central Florida. Plaintiff further admits that Gadsden and Leon Counties, Florida, are contiguous.

Plaintiff neither admits nor denies that these counties are the only places in the world where this type tobacco is grown exclusively for the reason that he is without knowledge of the truth of such facts and for him to ascertain such facts would require a large expenditure of public funds.

Plaintiff denies that type 62 tobacco grown in Gadsden and Leon Counties is grown within one air-line mile radius of the town of Quincy, Florida, for the reason that no part of Leon County is within that specified distance.

4. Plaintiff admits that in general practice there usually are approximately 3,500 to 4,000 pounds of tobacco in a "bulk".

84 Plaintiff neither admits nor denies the other matters contained in Request No. 4 for the reason that he is without knowledge as to the facts and is unable to ascertain their truthfulness without the expenditure of a tremendous amount of time and money. In addition, lacking skill and experience in this field, Plaintiff can neither admit nor deny that considerable skill and experience is required to successfully carry on this production of cigar-wrapper tobacco by means of the bulking process, and furthermore the Request is based on numerous assumptions, such as "necessary equipment", "knowledge", "trained personnel" and "skill and experience" which are factors not capable of being reduced to a constant.

5. Plaintiff denies the matters contained in Request No. 5 for the reason that there appear to be numerous businesses and industries of a manufacturing nature in the town of Quincy employing anywhere from 1 to over 100 employees, thus creating a considerable competitive labor market.

Plaintiff states that Section 2 of the Act is as follows:

"Sec. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of



the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the 85 several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

"(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several states and with foreign nations, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

In addition, Plaintiff states that in the town of Quincy and surrounding areas there are a large number of laborers, no doubt more in number than the farmers, and that these laborers are certainly entitled to the minimum wage so that they may be in a position to compete with labor in other businesses, referred to above, and areas.

Furthermore, the Annual Report on Tobacco Statistics prepared and published by the Production and Marketing Administration of the United States Department of Agriculture in December, 1950, reveals that the average price to the grower of type 62 shade-grown tobacco during the years 1934-1938, at the end of which the Act was 86 passed by Congress, was 56 9/10 cents per pound. During the period when this Act was in force this price to the grower soared to the level of \$2.10 per pound in 1940. During these same periods, whereas the production slightly more than doubled, the crop value increased four-fold.

6. Plaintiff admits that the population of the town of Quincy, according to the 1950 United States census, is 6,586.

7. Plaintiff admits that the growing of type 62 tobacco and the handling or packing of this tobacco after it has been cured (dried by artificial heat) are complementary seasonal operations in the sense that they follow each other as a matter of time.

Plaintiff denies that it is essential that the same labor which grew the tobacco on the farms, must follow this tobacco into the packing house and further process it therein.

In addition, Plaintiff neither admits nor denies the matters contained in sentences 4, 5 and 6 of this Request No. 7 since he is without knowledge as to the truth of the facts contained therein and is unable to obtain such knowledge without a tremendous expenditure of time and public funds.

8. Plaintiff admits that under the definition of "area of production", validly issued and promulgated by the Administrator of the Wage and Hour Division, pursuant to Section 13(a) (10) of the Act, individuals are excluded therefrom if the establishment wherein they are employed is located within one air-line mile of any city with a population of 2,500 up to, but not including, 50,000.

87 9. Plaintiff neither admits nor denies that the prevailing wage paid to laborers by farmers processing their own tobacco in their own warehouses in Quincy is 50c per hour for the reason that he is without such information as would enable him to swear to the truth thereof and would be unable to obtain the necessary information without a large expenditure of both time and money in conducting investigations of all these farmers and their employees.

10. Plaintiff neither admits nor denies this Request No. 10 on the ground that he has no knowledge of such facts and for him to secure such knowledge would require the expenditure of a great deal of time and public funds.

11. Plaintiff admits that as of the time of the Wage and Hour investigation the defendants were paying sorters employed by them in the production of processed tobacco in their plant or warehouse 50c an hour or less; and were paying other employees employed in their plant or warehouse more than 75c per hour. Plaintiff also admits that the minimum rate required by the Fair Labor Standards Act of 1938 as amended is 75c per hour.

12. Plaintiff admits the facts set forth in Request No. 12.

13. Plaintiff denies that portion of Request No. 13, which portion is as follows: "That the Administrator gave none of the producers of U. S. Type 62 tobacco any notice of a hearing on the definition of the term 'area of production'." Notice was given to these parties

88 by publication of the notice in the Federal Register on January 6, 1945. 10 F.R. 264. Plaintiff admits that the record of the administrative proceeding referred to herein fails to reveal that any of the producers of type 62 shade-grown tobacco appeared at said hearing, that any evidence was taken pertaining to the growing of said tobacco, or that the Administrator had any evidence specifically in connection with type 62 shade-grown tobacco.

14. Plaintiff neither admits nor denies the matters contained in Request No. 14 since he is without such knowledge and for him to secure such knowledge would require the expenditure of a large amount of time and public funds. Whether the employees referred to herein are exempt or non-exempt is for a Court to decide and not Plaintiff. Plaintiff could not even offer an opinion without causing to be conducted a full-scale investigation to determine all the facts.

In addition, Plaintiff states that the matters contained in Request No. 14 are immaterial and irrelevant. The status of American Sumatra Tobacco Corporation, a farmer, is immaterial to this cause. The reason the employees of defendants may not be exempt is because they are not engaged in farming, nor are they employed by a farmer or on a farm. If the employees of American Sumatra Corporation are exempt it is by virtue of Section 13(a)(6), which section was inserted by Congress itself. Section 13(a)(6) is a separate and distinct section applying to employees employed in agriculture. Congress went further and defined agriculture. Congress thereby indicated its considerations of farmers and agriculture. However, Congress recognized that there might be instances where

Section 13(a)(6) would not apply and an exemption would be desirable. It passed Section 13(a)(10), but recognizing the gigantic task of formulating a set of standards defining "area of production" which would be applicable on a nation-wide basis it declined to define these terms and delegated to the Administrator the duty of so doing. Section 13(a)(10), with which we are here concerned, is a complete section in itself and cannot be defined or interpreted by reference to other sections of the Act. Defendants' position cannot be discussed with reference to Section 13(a)(6) since they are not farmers, but are manufacturers, nor do their activities constitute farming nor do they occur on a farm.

15. Plaintiff repeats and reasserts all his reply and statements in No. 14 above.

16. Plaintiff repeats and reasserts all his reply and statements in No. 14 above.

19. Plaintiff denies all the matters set forth in Request No. 19.

20. Plaintiff admits that the farmers whose names appear in Request No. 20 did sign a document purporting to represent a contract between themselves and defendants for the further processing of the farmers' 1950 tobacco crop after it had been cured on the farm by the farmers. In no way did this document affect the employer-employee relationship between defendants and their employees. Plaintiff cannot foresee the future and is therefore unable to admit or deny that these farmers will execute similar contracts in the future.

90 Plaintiff admits that the copy of the contract attached to defendants' answer is a true and exact copy of a form of contract furnished the Wage and Hour Investigator at the time of the investigation by defendants and represented to him by defendants as being the form of contract executed by and between the farmers and defendants.

22. Plaintiff admits the matters contained in Request No. 22.

23. Plaintiff admits that at the time of the Wage and Hour inves-

igation there were approximately 708 workers employed during the preparation of the U. S. type 62 tobacco in defendants' warehouse.

(S.) WILLIAM S. TYSON,

*Solicitor.*

(S.) REID WILLIAMS,

*Acting Regional Attorney.*

(S.) ROBERTSON C. HESSE,

*Attorney, United States Department of Labor.*

*Attorneys for Plaintiff*

Certificate of Service (omitted in printing)

91 *Duly sworn to by Robertson C. Hesse. Jurat omitted in printing.*

92 IN UNITED STATES DISTRICT COURT,

OBJECTIONS TO PORTIONS OF DEFENDANTS' REQUEST, ETC.—Filed  
December 3, 1951

Plaintiff in the above entitled cause makes the following objections to the written requests for admissions served herein by defendants on the 1st day of November, 1951.

1. Plaintiff objects to a portion of Request No. 1, which portion is as follows: "(All of the tobacco grown in Madison County is packed in that county and will be disregarded in this request, although the similarity between conditions existing in Madison County, Florida, and those existing in Gadsden County, Florida, is so great that the decision in this cause will probably affect each in the same fashion.)"

The objection is that these matters are irrelevant and immaterial to the cause and call for conclusions of law and fact and opinion rather than admissions of fact.

2. Plaintiff objects to this Request No. 2 on the ground that the matters set forth therein are immaterial and irrelevant to the issues in the cause. As an additional ground of objection thereto Plaintiff states that this Request calls for conclusions of fact and law and opinions rather than admissions of fact.

3. Plaintiff objects to this Request No. 3 on the ground that the matters set forth therein are immaterial and irrelevant to the issues in the cause. As an additional ground of objection

93 Plaintiff states that this Request calls for conclusions of fact and law and opinions rather than admissions of fact.

7. Plaintiff objects to a portion of Request No. 7, which portion is as follows: "That this same labor for the most part lives year

room on the farms in tenant houses furnished rent free by the owners of the farm. In addition to the housing facilities, the labor is furnished free water and a farm plot on which they may raise their own vegetables and a limited amount of live stock. That transportation is furnished to them from their homes to their places of work, and return. Those living in Quincy are transported to the packing houses during packing season. That to all intents and purposes the farm labor and packing house labor in the Quincy area are identical."

The objection is that this portion requests Plaintiff to swear to the veracity of a conclusion of fact rather than make an admission of fact.

8. Plaintiff objects to such portion of Request No. 8 as reads: "This definition as applied to Quincy has created a situation whereby employees at one packing house are held to be covered by the Act, while other persons doing the identical work in another packing house a few blocks away are held not to be covered because of the exemption in Section 13(a)(6) of the Act if the packing house is owned by the farmer who grew the tobacco which is being prepared for market. That if a farmer owns his own warehouse and processes his own tobacco the Administrator concedes he is not covered by the Act, but if he undertakes to prepare the tobacco of other growers, then upon the beginning, and until the completion of the work for other growers he is contended by the Administrator to be covered by the Act."

The objection is on the ground that the above quoted portion requires Plaintiff to formulate and swear to conclusions of law based on the hypothetical and incomplete facts contained therein. Furthermore, even were Plaintiff in a position to state his opinion on the concern as called for therein he would have to cause to be conducted extensive investigation of all the growers and their employees referred to herein. In addition, defendants in their answer have not claimed to be farmers or growers, and there are no farmers or growers involved in this action.

9. Plaintiff objects to a portion of Request No. 9, which portion reads as follows: "That the application by the Administrator of the term 'area of production' as applied to Type 62 shade grown leaf tobacco and the town of Quincy, Florida, results in the tobacco of the small farmer being burdened with an extra twenty-five cents per hour for such labor and that it must move into an open, free and competitive market at a serious disadvantage to the tobacco produced by those who own their own plants and do their preparation of the tobacco for market therein."

The objection is that the above quoted portion does not contain facts which Plaintiff can either admit or deny but in essence is a series of conclusions both of fact and law calling for an expression



of opinion rather than an admission of any fact by Plaintiff.  
 95 17. Plaintiff objects to the entire Request No. 17 on the ground that it is so ambiguous and unintelligible as to be incapable of being answered.

18. Plaintiff objects to Request No. 18 on the ground that it is not sufficiently clear for him to determine what he is requested to admit or deny and that it is ambiguous and unintelligible. In addition, it would involve an expenditure of time and money for Plaintiff to determine what constitutes "labor cost" and other items in this Request.

19. Plaintiff objects to the entire Request No. 19 on the grounds that it is so ambiguous and unintelligible as to be incapable of being answered.

21. Plaintiff objects to Request No. 21 on the ground that the matters contained therein are immaterial and irrelevant to the issues in this cause.

Wherefore, Plaintiff moves this Court for an order striking out Requests numbered 2, 3, 17, 18, 19 and 21 and such portions as are above specified of Requests numbered 1, 7, 8 and 9 and excusing him from replying to them.

Dated: November 30, 1951.

(S.) WILLIAM S. TYSON

*Solicitor*

(S.) REID WILLIAMS,

*Acting Regional Attorney.*

(S.) ROBERTSON C. HESSE,

*Attorney, United States Department of Labor.*

*Attorneys for Plaintiff.*

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## IN UNITED STATES DISTRICT COURT

## NOTICE

Please take notice that the undersigned will bring the above Objections on for hearing before this Court at such place and at the earliest practicable time as the Court may determine.

Certificate of service omitted in printing.

## IN UNITED STATES DISTRICT COURT

AMENDMENT TO PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST  
FOR ADMISSIONS Filed December 17, 1951.

Pursuant to Rule 15 Plaintiff hereby amends paragraph 14 of his Response to Defendants' Request for Admissions heretofore filed in this cause to read as follows:

14 Plaintiff neither admits nor denies the matters contained in Request No. 14 since he is without such knowledge, and for him to secure such knowledge would require the expenditure of a large amount of time and public funds.

In addition, plaintiff can neither admit nor deny Request No. 14 for the reason that said Request obviously calls for a conclusion of law which is solely within the jurisdiction and authority of a Court of law.

(S) WILLIAM S. TYSON,

*Solicitor,*

(S) BEVERLY R. WORRELL,

*Regional Attorney,*

(S) ROBERTSON C. HESSE,

*Attorney, United States Department of Labor,*

*Attorneys for Plaintiff.*

Certificate of service omitted in printing.

98

*Duly sworn to by Robertson C. Hesse. Jurat omitted in printing.*

## ORDER ON PLEADINGS—Filed February 5, 1952

This matter came on for hearing this day on certain motions filed herein and the following proceedings were had:

1. Motions to strike certain parts of answer were abandoned because of filing of amended answer.

2. During the course of argument counsel for defendants moved the Court for permission to amend instant requests for admissions numbers 9 and 19, which were granted.

3. The Court heard argument upon objections to certain of the requests for admissions and made rulings thereon, and in consideration thereof, it is

Ordered and Adjudged:

A. That the objection with reference to Madison County, Florida, in request for admission #1 be and the same is hereby sustained.

B. That the words, "and becomes valueless for any purpose" in request for admission #2 be stricken and otherwise the objection to said request for admission is overruled.

C. That objections to requests for admissions #s 3, 8, 9, as amended and 19, as amended, are overruled.

100 D. That objection to requests for admissions #s 7, 17, 18 and 21 are sustained.

Done and Ordered at Tallahassee, Florida, this 5th day of February, 1952.

(S.) DOZIER A. DeVANE,

United States District Judge.

## IN UNITED STATES DISTRICT COURT

## RESPONSE TO REQUEST FOR ADMISSIONS—Filed February 18, 1952

Now comes the plaintiff, reserving all pertinent objections to admissibility which may be interposed at the trial, and pursuant to this Court's Order On Pleadings and in answer to Defendants' Request For Admissions heretofore served in the above-stated matter, says:

(2) Plaintiff admits the facts set forth in Request No. 2

(3) Plaintiff admits the facts set forth in Request No. 3 with the exception that plaintiff denies that a farmer must own and grow one hundred or more acres of tobacco before he can economi-

cally own or have all the equipment set forth and described in this Request No. 3.

(8) Plaintiff, while reasserting and realleging all the grounds set forth in his Objection to this Request and stating that the matters called for in this Request are conclusions of law and fact which must be determined by a Court through litigation properly encompassing such issues, states that it is only within his authority to render an opinion as concerns the conclusions called for in this Request and that it is his opinion that these conclusions should be denied with the exception that, in his opinion, if such farmer undertakes to prepare the tobacco of other growers in his packing house then upon the beginning and until the completion of the work for the other growers he is covered by the Act.

(9) His objection to a certain portion of Request No. 9 having been overruled by the Court, plaintiff denies all of the facts and conclusions contained in that certain portion.

(19) Plaintiff denies the facts and conclusions contained in Request No. 19.

(S.) WILLIAM S. TYSON,

*Solicitor,*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney,*

(SA) ROBERTSON C. HESSE,

*Attorney, U. S. Department of Labor,*

*Attorneys for Plaintiff.*

102 Certificate of Service (omitted in printing)

*Duly sworn to by Robertson C. Hesse. Jurat omitted in printing.*

103 IN UNITED STATES DISTRICT COURT

DEFENDANTS NOTICE OF TRIAL—Filed March 20, 1952

To: Beverley R. Worrell, Regional Attorney,  
Office of the Solicitor,  
U. S. Department of Labor,  
1908 Comer Building,  
Birmingham 3, Alabama

You are hereby notified that the Honorable Dozier A. DeVane, United States District Judge for the Northern District of Florida, has set the above entitled cause for trial to begin at 10:00 A. M., Eastern Standard Time, on the morning of April 21, 1952, the trial

to be held at the Courtroom of the Federal Court House, Post Office Building, Tallahassee, Florida.

Dated this 18th day of March, A. D. 1952.

CALDWELL, PARKER, FOSTER & WIGGINTON,

By (S.) JULIUS F. PARKER,

*Attorneys for Defendants.*

904 Certificate of Service (omitted in printing)

IN UNITED STATES DISTRICT COURT

INTERROGATORIES—Filed March 20, 1952

To the Defendants:

You are hereby requested to answer the following interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure.

1. As to each of the farmers listed in Request No. 20 of defendants' amended Request for Admissions how many pounds of the 1950 crop of Type 62 shade-grown tobacco, by each grade and "priming", grown by or on the farms of each of these farmers was processed or bulked in defendants' packing house in Quincy, Florida?

105 2. How many pounds, by each grade and priming, of the tobacco referred to in Interrogatory No. 1 was sold, assigned, or transferred to Budd Cigar Company, a corporation, Quincy, Florida?

3. What were the total dollar values of each grade and priming of this tobacco so sold, assigned or transferred to Budd Cigar Company?

4. How many pounds of tobacco, by each grade and priming, to be used for cigar wrappers was bought by Budd Cigar Company, a corporation, (a) in the last six months of 1950, (b) in the first six months of 1951?

5. What were the total prices for each grade and priming of the tobacco referred to in Interrogatory No. 4 paid by the Budd Cigar Company, a corporation, in each of the periods designated in said Interrogatory No. 4?

6. Was any of the tobacco referred to in Interrogatory No. 1 above sold, delivered, or transferred to any person company, partnership or corporation?

7. If the answer to Interrogatory No. 6 above is in the affirmative



what was the name and address of each such person, company, partnership or corporation?

8. As to each of the persons, companies, partnerships or corporations named in Interrogatory No. 7 above what were the total numbers of pounds of the tobacco referred to in Interrogatory No. 1

by each grade and priming, sold, delivered or transferred to such persons, companies, partnerships or corporations?

9. What were the total amounts paid by each of such persons, companies, partnerships or corporations as to each grade and priming for the tobacco referred to in Interrogatory No. 8 above?

10. To which of the farmers listed in Request No. 20 referred to in Interrogatory No. 1 above as having contracts for dealing with defendants did defendants advance cloth, fertilizer, seed, funds or anything else?

11. As to each of the farmers referred to in Interrogatory No. 10 receiving advances of funds, cloth, etc., from defendants what was the cost of or value of the materials so advanced and the amount of the funds so advanced?

12. Was any interest charged by defendants on the money advanced by them to the farmers referred to in No. 10 above?

13. If the answer to Interrogatory No. 12 is in the affirmative what was the rate of the interest so charged?

14. What was the cost to defendants of the cloth, fertilizer and/or other materials advanced or furnished by defendants to these farmers having contracts with the defendants?

15. What was the original cost or purchase price of the defendants' packing house and equipment to the defendants wherein the tobacco grown by these farmers having contracts with the defendants was packed or bulked?

16. What is the present book value of this packing house and these facilities referred to in Interrogatory No. 15?

17. How is the amount of rent the individual farmers referred to in Interrogatory No. 1 above pay defendants under their contracts computed?

18. What was the total amount received by defendants from these rents during the 1950 season?

19. What was the total amount received by defendants as commissions on the sales of tobacco grown in 1950 by these farmers who had contracts with defendants?

20. Did any of the farmers, referred to in Interrogatory No. 1 above, who had contracts with defendants take their tobacco elsewhere for sale by other persons after it had been packed or bulked in defendants' packing house?

21. If the answer to Interrogatory No. 20 is in the affirmative,

which of the farmers referred to therein sold their tobacco through other persons or sales agents.

(S.) WILLIAM S. TYSON

*Solicitor*

(S.) BEVERLEY R. WORRELL

*Regional Attorney*

(S.) ROBERTSON C. HESSE

*Attorney, U. S. Department of Labor, Attorneys for Plaintiff*

108 CERTIFICATES OF SERVICE (Omitted in printing)

# IN UNITED STATES DISTRICT COURT

(Title Omitted)

ANSWERS TO INTERROGATORIES—Filed April 1, 1952

Come now the defendants, J. T. Budd, Jr. and Florence W. Budd, co-partners, doing business as J. T. Budd, Jr. and  
109 Company and file this their answers to the interrogatories propounded to them by the plaintiff.

1. 333,889 pounds of the tobacco of the farmers listed in Request No. 20 was processed or bulked in defendants' packing house in Quincy, Florida. Attached hereto are copies of the settlement sheets showing the amount of tobacco processed for each farmer with the grade thereof and the prices paid therefor. The original records of each "priming" for the year 1950 are not available as they have either been destroyed or are so mixed up with other records in the packing house that they cannot be reassembled.

2. All of the tobacco processed for the farmers listed in Request No. 20 was purchased by Joseph T. Budd, Jr. and Florence W. Budd, however, only 231,209 pounds was sold, assigned or transferred to Budd Cigar Company, a corporation of Quincy, Florida. The remainder of the tobacco was sold to those persons, firms, or corporations listed in the invoices which are attached hereto marked defendants' Exhibit Series B.

3. The total dollar value of each grade and priming of the tobacco sold or assigned to Budd Cigar Company was as follows:

82,715 lbs.	No. 1 String @	\$3.00	\$248,145.00
122,264 lbs.	No. 2 String Off Color @	2.25	275,094.00
21,922 lbs.	No. 2 String Off Color @	2.29	50,201.38
4,357 lbs.	No. 1 String @	3.00	13,071.00
151 lbs.	No. 2 String Off Color @	2.29	345.79
231,209 lbs.	Total	Total Dollar Value	\$586,857.17

110 4. The number of pounds of tobacco, by each grade and  
priming, to be used for cigar wrappers bought by Budd Cigar  
Company, a corporation, (a) in the last six months of 1950 was None,  
(b) in the first six months of 1951 the number of pounds purchased  
were 231,209.

5. Question No. 5 is answered by the Exhibit A Series attached  
hereto.

6. All of the tobacco referred to in Interrogatory No. 1, was  
sold first to J. E. Budd Tobacco Company, who in turn sold 231-  
209 pounds of it, as answered in Interrogatory No. 3, to Budd  
Cigar Company. The remainder was sold to the persons, firms or  
corporations listed in the invoices attached hereto as Series Ex-  
hibit B.

7. Exhibit B series attached hereto answers Question No. 7.

8. Question No. 8 is answered along with the answer to Inter-  
rogatory No. 3.

9. Question No. 9 is answered the same as Question No. 8.

10. The defendants advanced cloth, seed and funds to all of the  
farmers listed in Request No. 20; it advanced fertilizer to none  
of them.

11. Question No. 11 is answered by the Exhibit A Series which  
reveals the monies advanced to the farmers and the total value of  
the goods advanced which was computed at cost plus five per-  
cent.

111 12. No interest was charged by the defendants on monies  
advanced by them to the farmers referred to in Interroga-  
tory No. 10.

13. The answer to question No. 13 is that no rate of interest was  
charged.

14. The cost to the defendants of the cloth and other materials  
advanced or furnished by the defendants to the farmers referred  
to was the sum listed on the settlement sheets with the farmers  
except that the sums listed represent cost plus five percent.

15. The original cost of the defendants' packing house was \$70-  
451.15. This includes equipment.

16. The original cost of \$70,451.15 for the defendants' packing  
house and equipment has been depreciating \$21,959.60, plus \$2-  
779.44, leaving a present book value of \$24,739.04.

17. and 18. The amount of rent of the individual farmers is re-  
vealed in the Exhibit Series A. The total amount received from  
said farmers is \$4,453.50. This rent was charged for use by the  
farmers of the space for a six month's period. During the remainder  
of the year the warehouse is rented to Budd Cigar Company for  
a total rent of \$4,800.00.

19. The defendants charged no commissions on the sales of tobacco grown in 1950.

20. None.

112 21. None.

JOSEPH T. BUDD, JR.  
FLORENCE W. BUDD  
By JULIUS F. PARKER,  
*Attorney for the Defendants*

*Duly sworn to by Julius F. Parker, jurat omitted in printing.*

113

### EXHIBIT A—No. 1.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 2, 1951

Mr. Marvin Suber,  
R-3, Quincy, Fla.

#### Statement of 1950 Packing Shade Tobacco

4946 lbs. No. 1 Wrapper @	\$2 20	\$11,326 34
329 lbs. Off Color (long) @	2 00	658 00
63 lbs. Off Color (short) @	1 50	94 50
855 lbs. Brokes @	1 25	1,068 75
199 lbs. Filler @	40	77 60
321 lbs. 5th Priming @	1 75	561 75
472 lbs. 6th Priming @	1 75	826 00
1157 lbs. Tops @	1 00	1,157 00

\$15,769 94

#### Advances

Cash Advanced	\$12,046 33
Labor	1,184 80
Rent	112 50
Baling Material	74 34
Insurance	98 67

\$13,516 64

Check Herewith \$ 2,253 30

\$15,769 94



114

Received Payment:

(S.) MARVIN SUBER

Copy

EXHIBIT A—No. 2

J. T. BUDD, JR. &amp; CO.

Quincy, Fla.

January 6, 1951

Fr. Drew Haire  
Quincy  
Florida

## Statement of 1950 Packing Shade Tobacco

6780 lbs. No. 1 Wrappers @ 2.43	\$16,475.40
150 lbs. Off Color (Short) @ 1.00	150.00
1650 lbs. Brokes @ \$1.25	2,062.50
276 lbs. Filler @ \$.40	110.40
104 lbs. Tops @ \$1.00	104.00

---

\$18,902.30

## Advances

Cash Advances	\$ 1,574.35
Labor	961.55
Rent	135.00
Baling Material	67.26
Insurance	95.88

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\$ 2,834.04



115

Balance	\$16,068 26
Less Insurance Tobacco	4,788 00
	<hr/>
Plus Salvage	\$11,280 26
	2,342 00
	<hr/>
Check Herewith	\$13,622 26

Received Payment:

(S.) DREW HAIRE

Copy

EXHIBIT A—No. 3.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 16, 1951

Mr. Clint Bassett  
Quincy  
Florida

## Statement of 1950 Packing Shade Tobacco

7282 * No. 1 Wrappers @ \$2.45	\$15,656 30
2328 * Off Color (Long) @ \$2.20	1,656 00
229 * Off Color (Short) @ \$1.00	229 00
3280 * Brokes @ \$1.25	4,100 00
533 * Filler @ \$.40	213 20
64 * Dark Tobacco @ \$.50	30 50
752 * 7th Priming @ \$1.50	1,128 00
1096 * Tops @ \$1.00	1,096 00
	<hr/>
	\$27,109 00

116

## Advances

Cash Advanced	\$13,078.88
Cheese cloth	3,789.04
Labor	2,663.65
Rent	180.00
Baling Material	141.51
	458.46
Insurance	278.46
	<hr/>
Check Herewith	\$20,101.54
	\$ 7,007.46

Received Payment:

(S) CLINTON BASSETT

Copy

EXHIBIT A—No. 4

Suber & Johnson  
Phone 270

A No. 1898

Quincy, Fla. 2-6-195  
 Load of Cheese Cloth  
 From J. T. Budd, Jr. & Co.  
 To J. T. Budd, Jr. & Co.  
 Driver, on-off

117

Fees  
 L.B.C. Weighter  
 Gross Wt. 7965 lbs.  
 Tare 5500 lbs.  
 Net Wt. 2465 lbs.  
 Net Bush

CLINT BASSETT

Copy

EXHIBIT A—No. 5.

Suber & Johnson  
Phone 270

A No. 1899

Quincy, Fla. 2-6-195  
 Load of Cheese Cloth  
 From J. T. Budd, Jr. & Co.  
 To J. T. Budd, Jr. & Co.  
 Driver, on-off

118

Gross Wt. 7040 lbs.

Tare 5500 lbs.

Net Wt. 1540 lbs.

Net Bush

Weigher

CLINT BASSETT

Copy

EXHIBIT A—No. 6.

J. T. Budd, Jr. &amp; Co.

Quincy, Fla.

January 11, 1951

Mr. Ellis Maxwell

Reno

Georgia

Statement of 1950 Packing Shade Tobacco

3190 lbs. No. 1 Wrappers @ \$2.35	\$ 7,496.50
492 lbs. 8th Pr. @ \$1.60	787.20
377 lbs. Tops @ \$1.045	393.97
	<hr/>
	\$ 8,677.67

119

Advances

Cash Advanced	\$ 7,562.40
Labor	257.38
Rent	45.00
Baling Material	41.48
Insurance	40.59
	<hr/>
	\$ 7,946.85
Check Herewith	\$ 730.82
Received Payment:	

(S.) ELLIS MAXWELL

Copy

EXHIBIT A—No. 7.

J. T. Budd, Jr. &amp; Co.

Quincy, Fla.

January 10, 1951

Mr. M. J. Johnson

Reno, Ga.

Statement of 1950 Packing Shade Tobacco

2651 lbs. @ \$2.37, No. 1 Wrappers	\$ 8,652.87
370 lbs. @ \$1.81, Second Priming	669.70
376 lbs. @ \$1.00, Tops	376.00
	<hr/>
	\$ 9,698.57

120

## Advances

Cash Advanced	\$ 2,000.00
Cheese Cloth	563.33
Labor	324.27
Rent	45.00
Baling Material	46.02
Insurance	43.98

Check Herewith	\$ 8,022.60
Received Payment	\$ 1,675.97

(S.) M. J. JOHNSON

Copy

EXHIBIT A—No. 8

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 11, 1951

Henry Davis  
RFD

Chattahoochee, Florida

Statement of 1950 Packing Shade Tobacco

2000 lbs. o. 1 Wrappers @ \$2.375	\$ 4,892.50
109 lbs. Off Color (Long) @ \$2.00	218.00
41 lbs. Off Color (Short) @ \$1.50	61.50
67 lbs. Brokes @ \$1.25	83.75



121

9 lbs. Filler @ \$.40	3.60
365 lbs. Tops @ \$1.00	365.00

---

\$ 368.60

## Advances

Cash Advanced	\$ 3,589.20
Labor	271.17
Rent	30.00
Baling Material	28.82
Insurance	26.70

---

\$ 3,955.45

Check Herewith	\$ 1,668.90
Received Payment:	

(S.) H. J. DAVIS

Copy

EXHIBIT A—No. 9

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 11, 1951

Spooner Farm  
Greensboro  
Florida



122

Statement of 1950 Packing Shade Tobacco  
 22952 lbs. No. 1 Wrappers @ \$2.35 \$51,642.00  
 2616 lbs. Tops @ \$1.13 2,956.08

---

 \$56,803.28

Advances

Cash Advanced \$55,033.69  
 Labor 1,819.00  
 Rent 300.00  
 Baling Material 258.42  
 Insurance 255.68

---

 \$57,666.79

Balance due us \$ 773.51  
 Statement Accepted as Correct

(S.) MURRAY SPOONER

Copy

EXHIBIT A—No. 10

J. T. Budd, Jr. & Co.  
 Quincy, Fla.

January 11, 1951

Mr. H. S. Bets  
 Quincy  
 Florida

Statement of 1950 Packing Shade Tobacco

1051 lbs. Wrappers @ \$2.21 \$ 2,322.71  
 38 lbs. Off Color (Short) @ \$1.00 38.00

123

26 lbs. Brokes @ \$1.25	32.50
10 lbs. Fillers @ \$.40	4.00
345 lbs. 5th Pr. @ \$1.75	603.75
406 lbs. 6th Pr. @ \$1.50	609.00
277 lbs. Tops @ \$1.00	277.00

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\$ 3,886.96

## Advances

Cash Advanced	\$ 3,421.02
Labor	149.75
Rent	30.00
Baling Material	26.55
Insurance	22.69

---

\$ 3,653.01

Check Herewith	\$ 233.95
Received Payment:	

(S.) H. S. BETTS

Copy

EXHIBIT A—No. 11.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

2 January 1951

Mr. W. T. Suber, Jr.  
Gretna  
Florida

## Statement of 1950 Packing Shade Tobacco

3505 lbs. No. 1 Wrappers @ \$2.30	\$ 8,061.50
838 lbs. Off Color Wrappers @ \$2.00	1,676.00

124

80 lbs. Off Color (Short) @ \$1.50	120.00
816 lbs. Brokes @ \$1.295	1,056.72
111 lbs. Looseleaves @ \$.40	44.40
564 lbs. Tops @ \$1.00	564.00
	<hr/>
	\$11,522.62

## Advances

Cash Advanced	\$ 9,765.20
Labor	900.94
Rent	75.00
Baling Material	49.56
Insurance	63.37
	<hr/>
	\$10,739.07

Check Herewith	\$ 783.55
Received Payment:	

(S.) W. T. SUBER, JR.

Copy

EXHIBIT A—No. 12.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 11, 1951

Mr. L. O. Rehberg  
Reno  
Georgia

## Statement of 1950 Packing Shade Tobacco

1511 lbs. No. 1 Wrappers @ \$2.36	\$ 3,565.96
208 lbs. Tops @ \$1.055	219.44
	<hr/>
	\$ 3,785.40

125

## Advances

Cash Advanced	\$ 3,307.66
Labor	124.34
Rent	18.75
Baling Material	17.70
Insurance	17.19
	\$ 3,485.64
Check Herewith	\$ 299.76

Received Payment:

(S.) L. O. REHBERG

Copy

EXHIBIT A—No. 13

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 3, 1951

Mr. Otha Rowan  
Route 3  
Quincy, Florida

## Statement of 1950 Packing Shade Tobacco

874 lbs. No. 1 Wrappers @ \$2.41	\$ 2,106.34
43 lbs. Off Color (Long) @ \$2.00	86.00
10 lbs. Off Color (Short) @ \$1.50	15.00
29 lbs. Brokes @ \$1.25	36.25
6 lbs. Filler @ \$.40	2.40



126

275 lbs. 6th Priming @ \$1.50

412.50

55 lbs. Tops @ \$1.00

55.00

---

\$ 2,713.49

## Advances

Cash Advanced

\$ 2,286.00

Labor

97.47

Rent

15.00

Baling Material

14.16

Insurance

14.24

---

\$ 2,926.57

Balance due us

\$ 213.08

Statement Accepted as Correct:

(S.) OTHA ROWAN

EXHIBIT A—No. 14

J. T. Budd, Jr. & Co.  
Dealer in Cigar Leaf Tobacco  
Quincy, Florida

January 2, 1951

Mr. G. A. Maxwell  
Calvary  
Georgia

## Statement of 1950 Packing Shade Tobacco

2483 lbs. No. 1 Wrappers @ \$2.125

\$ 5,276.38

17 lbs. Off Color (Short) @ \$1.00

17.00

127

29 lbs. Brokes @ \$1.25

36.25

518 lbs. Tops &amp; 6th Priming @ \$1.00

518.00

---

\$ 5,847.63

## Advances

Cash Advanced

\$ 3,810.61

Labor

205.83

Rent

37.50

Baling Material

33.40

Insurance

32.61

---

\$ 4,121.95

Check Herewith

\$ 1,725.68

Received Payment:

(S.) G. A. MAXWELL  
By GLEN GRIFFITH



Copy

## EXHIBIT A—No. 15.

J. T. Budd, Jr., & Co.  
Dealer In Cigar Leaf Tobacco  
Quincy, Florida

January 2, 1951

Mr. Fred W. McNair  
Route 2  
Whigham, Georgia

## Statement of 1950 Shade Packing Tobacco

1236 lbs. No. 1 Wrapper @ \$2.35 ..... \$ 2,904.60  
77.00

---

\$ 2,981.60

## Advances

Cash Advanced ..... \$ 2,458.13  
Labor ..... 87.02  
Rent ..... 15.00  
Baling Material ..... 12.39  
Insurance ..... 13.09

---

\$ 2,585.63

Check Herewith ..... \$ 395.97

Received payment:

(S.) FRED W. McNAIR  
By T. C. McNAIR

129

Copy

## EXHIBIT A—No. 16.

J. T. Budd, Jr. & Co.  
Dealer In Cigar Leaf Tobacco  
Quincy, Florida

January 3, 1951

Jones & Watson  
Route 2  
Whigham, Georgia

## Statement of 1950 Packing Shade Tobacco

4337 lbs. No. 1 Wrappers @ \$2.35	\$10,191.95
440 lbs. Tops @ \$1.06	466.40

---

\$10,657.35

## Advances

Cash Advanced	\$ 7,699.29
Labor	309.63
Rent	52.50
Baling Material	49.56
Insurance	47.77

---

\$ 8,158.75

Check Herewith	\$ 2,498.60
----------------	-------------

Received Payment:

(S.) JONES & WATSON  
By R. E. WATSON

130

Copy

## EXHIBIT A—No. 17.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 3, 1951

Mr. C. T. Vanlandingham  
Greensboro  
Florida

## Statement of 1950 Packing Shade Tobacco

4249 lbs. No. 1 Wrappers @ \$2.25	\$ 9,985.15
519 lbs. Tops @ \$1.06	550.14

---

 \$10,535.29

## Advances

Cash Advanced	\$ 7,761.09
Labor	297.74
Rent	60.00
Baling Material	49.56
Insurance	47.69

---

 \$ 8,216.08

Check Herewith	\$ 2,319.21
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Received Payment:

(S.) C. T. VANLANDINGHAM

131

Copy

## EXHIBIT A—No. 18

J. T. Budd, Jr. & Co.  
Quincy, Florida

January 3, 1951

Mr. W. C. Jones

Route 2

Whigham, Georgia

## Statement of 1950 Packing Shade Tobacco

7253 lbs. No. 1 Wrappers @ \$2.36	\$17,117.08
666 lbs. Tops @ \$1.00	666.00

---

\$17,783.08

## Advances

Cash Advanced	\$13,265.73
Labor	560.26
Rent	75.00
Baling Material	83.19
Insurance	79.19

---

\$14,063.37

Check Herewith	\$ 3,719.71
----------------	-------------

Received Payment:

(S.) W. C. JONES

132

Copy

## EXHIBIT A—No. 49.

J. T. Budd, Jr. & Co.  
Quincy, Florida

January 2, 1951

Mr. Gordon Hiers  
Greensboro  
Florida

## Statement of 1950 Packing Shade Tobacco

4074 lbs. No. 1 Wrappers @ \$2.43	\$ 9,899.82
364 lbs. Off Color (Long) @ \$2.00	728.00
111 lbs. Off Color (Short) @ \$1.00	111.00
200 lbs. Brokes @ \$1.25	250.00
35 lbs. Looseleaves @ \$.40	14.00
12 lbs. Dark Tobacco @ \$1.00	12.00
175 lbs. 6th Priming @ \$1.50	262.50
343 lbs. Tops @ \$1.00	343.00

---

\$11,620.32

## Advances

Cash Advanced	\$ 8,995.61
Labor	543.15
Rent	75.00
Baling Material	54.87
Insurance	56.52

---

\$ 9,725.15

Check Herewith	\$ 1,895.17
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133

Received Payment:

(S.) GORDON HIERS

EXHIBIT A—No. 20

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 2, 1951

Mr. Glen Griffith  
Calvary  
Georgia

## Statement of 1950 Packing Shade Tobacco

8436 lbs. No. 1 Wrapper @ \$2.35	\$19,824.60
1069 lbs. Tops @ \$1.065	1,138.48
	<hr/>
	\$20,963.08
Advances	
Cash Advanced	\$10,094.40
Labor	628.57
Rent	90.00
Baling Material	99.12
Insurance	95.05
	<hr/>
	\$11,007.14
Check Herewith	\$ 9,955.94

Received Payment:

(S.) GLEN GRIFFITH

134

## EXHIBIT A—No. 21.

J. T. Budd, Jr. & Co.  
Quincy, Fla. °

January 2, 1951

Mr. Oscar Dean  
Route 3  
Quincy, Florida

## Statement of 1950 Packing Shade Tobacco

2343 lbs. No. 1 Wrappers @ \$2.345.....	\$ 5,494.33
330 lbs. Tops @ \$1.095.....	361.35

---

\$ 5,855.68

## Advances

Cash Advanced.....	\$ 3,954.18
Labor.....	169.26
Rent.....	30.00
Baling Material.....	30.09
Insurance.....	26.73

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4,210.26

Check Herewith.....	\$ 1,645.42
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Received Payment:

(S:) OSCAR DEAN

135

## EXHIBIT A—No. 22

J. F. Budd, Jr. & Co.  
Quincy, Fla.

January 2nd 1951

Rubin Jordan

Route 3

Quincy, Florida

## Statement of 4050 Packing Shade Tobacco.

313 lbs. No. 1 Wrappers @	\$2 25	\$ 704 25
20 lbs. Off Color (long)	2 20	44 00
25 lbs. Off Color (short)	4 00	25 00
35 lbs. Brokes	1 25	43 75
242 lbs. 2nd Priming	2 25	544 50
326 lbs. 3rd Priming	2 00	652 00
556 lbs. 5th Priming	1 50	834 00
60 lbs. Tops	1 00	60 00

---

\$ 2,907 50

## Advances

Cash advanced	\$ 2,150 00
Labor	111 27
Rent	22 50
Baling Material	17 70
Insurance	17 13

---

\$ 2,318 60

Check Herewith	\$ 588 90
----------------	-----------

Received Payment:

(S.) RUBIN JORDAN

136

## EXHIBIT A—No. 23

J. T. Budd Jr. & Co.  
Quincy, Fla.

2 January 1951.

Mr. Howard Suber  
Route 3  
Quincy, Florida

## Statement of 1950 Packing Shade Tobacco.

6862 lbs. No. 1 Wrapper @ \$2.36	\$16,191.32
620 lbs. Stk Priming @ \$1.60	\$ 992.00
810 lbs. Tops @ \$1.00	\$ 810.00

---

 \$17,996.32

## Advances

Cash Advanced	\$11,727.46
Labor	557.37
Rent	90.00
Baling Material	86.73
Insurance	82.92

---

 \$15,544.48

---

 Check Rerewith \$ 2,452.14

Payment Received:

(S.) HOWARD SUBER



137

Copy

## EXHIBIT A—No. 24

J. T. Budd, Jr. & Co.  
Quincy, Fla.

2 January 1951

Mr. Steve Dolan  
Route 1

Chattahoochee, Florida

## Statement of 1950 Packing Shade Tobacco

3513 lbs. No. 1 Wrapper @ \$2.35	\$ 8,255.55
460 lbs Tops @ \$1.055	\$ 485.30

---

 \$ 8,740.85

## Advances

Cash Advanced	\$ 7,252.15
Labor	250.48
Rent	45.00
Baling Material	42.48
Insurance	39.73

---

 \$ 7,629.84

Check Herewith	\$ 1,111.01
----------------	-------------

Received Payment:

(S.) STEVE DOLAN



138

## EXHIBIT A—No. 25.

J. T. Budd, Jr. & Co.  
Cigar Leaf Tobacco  
Quincy, Fla.

January 5, 1951

Mr. Jack McFarlin  
Quincy,  
Florida

## Statement of 1950 Packing Shade Tobacco

2600 lbs. No. 1 Wrappers @ \$2.60	\$ 6,760.00
137 lbs. Off Color (Short) @ \$1.00	137.00
363 lbs. Brokes @ \$1.50	544.50
53 lbs. Filler @ \$.40	21.20
1798 lbs. 2nd & 3rd Pr. @ \$1.75	3,146.50
1359 lbs. 6th Pr. @ \$1.25	1,698.75
590 lbs. Tops @ \$1.00	490.00

\$12,897.95

## Advances

Cash Advanced	\$10,500.37
Labor	711.98
Rent	105.00
Baling Material	69.03
Insurance	77.40

\$11,463.78

Check Herewith	\$ 1,434.17
----------------	-------------

Received Payment:

(S.) JACK McFARLIN

139

Copy

EXHIBIT A—No. 26

J. T. Budd, Jr. &amp; Co.

Quincy, Fla.

January 5, 1951

Mr. R. F. Hopkins

Route 3

Cairo, Georgia

## Statement of 1950 Packing Shade Tobacco

4093 lbs. No. 1 Wrappers @ \$2.19	\$ 2,393.67
9 lbs. Off Color (Short) @ \$1.00	9.00
38 lbs. Brokes @ \$1.25	47.50

598 lbs. 5th Pr. @ \$1.50	897.00
172 lbs. Tops @ \$1.00	172.00

---

 \$ 3,519.17

## Advances

Cash Advanced	\$ 2,785.83
Labor	137.89
Rent	22.50
Baling Material	23.01
Insurance	20.88

---

 \$ 2,990.00

Check Herewith	\$ 529.06
----------------	-----------

Received Payment:

(S.) ROBERT F. HOPKINS

140

Copy

## EXHIBIT A—No. 27

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 5, 1951

Mr. H. L. McKeon  
Quincy  
Florida.

## Statement of 1950 Packing Shade Tobacco

10038 lbs. No. 1 Wrappers @ \$2.35	\$23,623.50
1579 lbs. Top Middles @ \$1.20	1,894.80
644 lbs. Tops @ \$.50	322.00

---

\$25,840.30

## Advances

Cash Advanced	\$18,543.20
Labor	941.27
Rent	165.00
Baling Material	123.90
Insurance	122.61

---

\$19,895.98

Check Herewith	\$ 5,944.32
----------------	-------------

Received Payment:

(S.) H. L. McKEOWN

141

Copy

EXHIBIT A—No. 28

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Jan. 9th 1951

C. T. & Robert E. Williams  
Rt. #2  
Whigham, Ga.

Statement of 1950 Packing Shade Tobacco

2787 lbs. Middle @ \$2.20	\$ 6,131.30
207 lbs. Sand Leaves @ .65	134.55
396 lbs. Tops @ \$1.00	396.00

\$ 6,661.95

Advances

Cash Advanced	\$ 3,900.00
Cheese Cloth	1,416.08
Labor	195.00
Rent	45.00
Baling Material	35.40
Insurance	90.00

\$ 5,625.38

Check Herewith	\$ 1,036.57
----------------	-------------

Received Payment:

(S.) C. T. & ROBERT E. WILLIAMS  
By C. T. WILLIAMS



142

Copy

## EXHIBIT A—No. 29.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Jan. 10th 1951

Mr. T. W. Fletcher  
Quincy, Fla.

## Statement of 1950 Packing Shade Tobacco

Clark Shade	
3495 lbs. Wrappers @ \$2.05	\$ 7,164.75
191 lbs. Tops @ \$1.00	191.00
3 Acre Shade	
3362 lbs. Wrappers @ \$2.20	\$ 7,396.40
329 lbs. Tops @ \$1.10	361.90
Fletcher Shade	
3769 lbs. Wrappers @ \$1.845	\$ 6,953.81
353 lbs. Brokes @ \$1.25	440.00
29 lbs. Filler @ .40	11.60
437 lbs. Tops @ \$1.00	437.00
Jordan Shade	
1176 lbs. Wrappers @ 2.00	\$ 2,352.00
138 lbs. Tops @ 1.00	138.00
	<hr/>
	\$25,446.46



143

## Advances

Cash Advanced	\$20,118.21
Labor	1,090.52
Rent	180.00
Baling Material	143.37
Insurance	141.74

Check Herewith \$21,673.84  
\$ 3,772.69

Received Payment:

T. W. FLETCHER

Copy

EXHIBIT A—No. 30.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 9, 1951

Mr. G. G. Thomas  
Calvary,  
Georgia

## Statement of 1950 Packing Shade Tobacco

1815 lbs. No. 1 Wrappers @ \$2.30	\$ 4,174.50
97 lbs. Off Color (Short) @ \$1.00	97.00
149 lbs. Brokes @ \$1.25	186.25
28 lbs. Filler @ \$.40	11.20
850 lbs. 7th & 8th Pr. @ \$2.25	1,912.50
159 lbs. 9th Pr. @ \$1.25	198.75

144

172 lbs. Tops @ \$1.00 172 00

## Advances

\$ 6,752 20

Cash Advanced \$ 3,000 00

Cheesecloth 1,767 18

Labor 303 52

Rent 45 00

Baling Material 33 63

Insurance 34 82

\$ 5,184 15

Check Herewith \$ 1,568 05

Received Payment:

(S) G. G. THOMAS

Copy

EXHIBIT A-No. 31

J. T. Budd, Jr. &amp; Co.

Quincy, Fla.

January 11, 1951

Mr. Worth Suber

Route 2

Quincy, Florida

## Statement of 1950 Packing Shade Tobacco

3919 lbs. Wrappers @ \$2.40 \$ 9,405 60

152 lbs. Off Color (Short) @ \$1.00 152 00

2105 lbs. Broks @ \$1.25 2,631 25

145

304 lbs. Filler @ \$.40	121.60
31 lbs. Dark Tobacco @ \$1.00	31.00
1303 lbs. 5th & 6th Pr. @ \$1.50	1,954.50
1175 lbs. Tops @ \$1.00	1,175.00

\$15,470.05

## Advances

Cash Advanced	\$16,097.14
Labor	1,321.46
Rent	150.00
Baling Material	54.87
Insurance	94.71

\$17,718.18

Balance due us	\$ 2,247.23
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Statement Accepted as Correct:

(S.) WORTH SUBER

Copy

EXHIBIT A No. 32

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Jan. 10th 1931

Charles Smith  
Havana, Fla.

## Statement of 1950 Packing Shade Tobacco

2200 lbs. Wrappers @ \$2.15	\$ 4,749.35
89 lbs. Off Color (short) @ \$1.00	89.00

146

445 lbs. 7th Pr. @ \$1.50	667.50
385 lbs. Tops @ \$1.00	385.00

---

\$5,890.85

## Advances

Cash Advanced	\$5,046.22
Labor	211.52
Rent	45.00
Baling Material	33.63
Insurance	34.19

---

\$ 5,370.56

Check Herewith	\$ 520.29
----------------	-----------

Received Payment:

(S.) CHARLIE SMITH

Copy

EXHIBIT A—No. 33

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Jan. 10th 1951

Mr. A. M. Haire  
RFD

Chatahoochee, Fla.

## Statement of 1950 Packing Shade Tobacco

2886 lbs. Middles @ \$2.30	\$ 6,637.80
87 lbs. Off Color (short) @ \$1.00	87.00

147

358 lbs. Brokes @ \$1.25	447 50
66 lbs. Filler @ 40	26 40
624 lbs. T. M. & 6th Pr. @ \$1.50	936 00
101 Tops @ \$1.00	401 00
	<u>\$ 8,535 70</u>

## Advances

Cash Advanced	\$ 6,892 29
Cheese Cloth	706 40
Labor	470 95
Rent	49 50
Baling Material	40 71
Insurance	46 53

Check Herewith

\$ 8,206 38  
\$ 329 32

Received Payment:

A. M. HAIRE

148

## Copy

EXHIBIT A—No. 34.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 10, 1951

Gregory Brothers  
Havana, Florida

## Statement of 1950 Packing Shade Tobacco

15465 lbs. No. 1 Wrappers @ \$2.37	\$36,652 05
2546 lbs. Tops @ \$1.00	2,546 00

\$39,198 05

## Advances

Cash Advanced	\$29,575 50
Labor	1,272 58
Rent	195 00
Baling Material	203 55
Insurance	197 17

Check Herewith

\$31,443 80  
\$ 7,754 25

Received Payment:

GREGORY BROS.  
(S.) B. L. GREGORY



149

Copy

## EXHIBIT A—No. 35.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 11, 1951

Mr. Raymond Poppell  
Concord  
Florida

## Statement of 1950 Packing Shade Tobacco

899 lbs. No. 1 Wrappers @ \$2.18	\$ 1,959.82
39 lbs. Off Color (Long) @ \$2.00	78.00
10 lbs. Off Color (Short) @ \$1.50	15.00
35 lbs. Brokes @ \$1.25	43.75
255 lbs. 4th Pr. @ \$1.75	446.25
1 lb. Filler @ \$.40	.40
174 lbs. 6th Pr. @ \$1.25	217.50
64 lbs. Tops @ \$1.00	64.00

\$ 2,824.72

## Advances

Cash Advanced	\$ 2,208.56
Labor	105.40
Rent	22.50
Baling Material	17.70
Insurance	15.99

\$ 2,370.15

Check Herewith

\$ 454.57

Received Payment:

(S.) RAYMOND POPPELL

150

Copy

## EXHIBIT A - No. 36

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Jan. 10th 1951

Mr. W. B. Smith  
Havana, Fla.

## Statement of 1950 Packing Shade Tobacco

3394 lbs. No. 1 Wrapper @ \$2.37	\$ 8,043.78
353 lbs. 7th Pr. @ \$1.50	529.50
579 lbs. Tops @ \$1.00	579.00

---

 \$ 9,152.28

## Advances

Cash Advance	\$ 6,500.00
Cheese Cloth	565.18
Labor	282.51
Rent	60.00
Baling Material	46.02
Insurance	43.02

---

 \$ 7,496.73

Check Herewith	\$ 1,655.55
----------------	-------------

Received Payment:

(S.) W. B. SMITH  
By MRS. W. B. SMITH

Copy

EXHIBIT A—No. 37

J. T. Budd, Jr. & Co.  
Quincy, Fla.

January 11, 1951

Mr. Glover Kemp  
Havana  
Florida

## Statement of 1950 Packing Shade Tobacco

771 lbs. No.1 Wrappers @ \$2.20	\$ 1,696.20
29 lbs. Off Color (Short) @ \$1.00	29.00
53 lbs. Brokes @ \$1.25	66.25
10 lbs. Filler @ \$.40	4.00
267 lbs. 3 rd Pr. @ \$2.00	534.00
187 lbs. 6th Pr. @ \$1.25	235.50
189 lbs. Tops @ \$1.00	189.00

---

 \$ 2,753.05

## Advances

Cash Advanced	\$ 2,283.08
Rent	22.50
Eabor	111.78
Baling Material	15.93
Insurance	16.19

---

 \$ 2,450.38

Check Herewith	\$ 303.57
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Received Payment:

(S.) GLOVER KEMP

152

Copy

## EXHIBIT A—No. 38.

J. T. Budd Jr. & Co.  
Quincy, Fla.

Jan. 10th 1951

Ben Brown

Rt. #2

Quincy, Fla.

## Statement of 1950 Packing Shade

665 lbs. No. 1 Wrapper @ \$2.40	\$ 1,596.00
370 lbs. Off Color (long) @ \$1.75	647.50
149 lbs. Off Color (short) @ \$1.50	223.50
281 lbs. Brokes @ \$1.25	351.25
55 lbs. Filler @ 40c	22.00
667 lbs. Tops @ \$1.00	667.00

---

\$ 3,507.25

## Advances

Cash Advanced	\$ 2,956.00
Labor	376.56
Rent	45.00
Baling Material	15.93
Insurance	24.24

---

\$ 3,417.73

Check Herewith

---

\$ 89.52



153

Received Payment:

(S.) BEN BROWN  
By ALVIE WOLF

Farmers Home Adm. Co. Sup.

Copy

EXHIBIT A—No. 30.

J. T. Budd Jr & Co.  
Quincy, Fla.

Jan. 9th 1951

Elijah McMillan  
Rt # 1 Box 136  
Chattahoochee,  
Florida

## Statement of 1950 Packing Shade Tobacco

3372 lbs. Middles @ \$1.70	\$ 5,732.40
600 lbs. Tops @ \$1.05	630.00
	<hr/>
	\$ 6,362.40
Advances	
Cash Advanced	\$ 5,260.00
Labor	243.82
Rent	45.00
Baling Material	38.94
Insurance	39.72
	<hr/>
	\$ 5,627.48
Check Herewith	\$ 734.92

Received Payment:

(S.) ELIJAH McMILLAN



154

Copy

## EXHIBIT A—No. 40

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 8, 1951

Mr. C. C. Duke

RFD1

Bainbridge, Georgia

## Statement of 1950 Packing Shade Tobacco

4131 lbs. No. 1 Wrappers @ \$2.425	\$10,017.68
93 lbs. Off Color (Short) @ \$1.00	93.00
431 lbs. Brokes @ \$1.25	538.75
89 lbs. Filler @ \$.40	35.60
669 lbs. Tops @ \$1.00	669.00

---

\$11,354.03

## Advances

Cash Advanced	\$ 8,832.17
Labor	543.13
Rent	90.00
Baling Material	49.56
Insurance	56.58

---

\$ 9,571.44

Check Herewith.....\$ 1,782.59

Received Payment

S) C. C. DUKE

Copy

## EXHIBIT A—No. 41.

J. T. Budd Jr. & Co.  
Quincy, Florida

January 8, 1954

Mr. John B. Smith  
Route 2, Box 25  
Quincy, Florida

## Statement of 1950 Packing Shade Tobacco

472 lbs. No. 1 Wrappers @ \$2.20	\$ 1,038.40
55 lbs. Off Color (Short) @ \$1.00	55.00
37 lbs. Brokes @ \$1.50	55.50
5 lbs. Filler @ \$.40	2.00
2205 lbs. Middles @ \$1.35	2,976.75
332 lbs. Tops @ \$1.00	332.00

---

\$ 4,439.65

## Advances

Cash Advanced	\$ 4,937.98
Labor	208.27
Rent	37.50
Baling Material	33.63
Insurance	33.26

---

\$ 5,250.64

Balance due us	\$ 790.99
----------------	-----------

Statement Accepted as Correct:

(S.) JOHN B. SMITH

156

Copy

## EXHIBIT A—No. 42

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 8, 1951

Mr. Carl Haire

Gretna

Florida

## Statement of 1950 Packing Shade Tobacco

5534 lbs. No. 1 Wrappers @ \$2.11	\$11,842.76
480 lbs. Tops @ \$1.00	480.00

---

\$12,322.76

## Advances

Cash Advanced	\$ 6,336.39
Labor	602.20
Rent	67.50
Baling Material	53.50
Insurance	100.06

---

\$ 7,119.25

Check Herewith

---

\$ 5,203.51

Received Payment:

(S.) CARL HAIRE

157

Copy

## EXHIBIT A—No. 43.

J. T. Budd Jr. & Co.  
Gulney, Fla.

January 2, 1951

J. C. Bentley  
Greensboro, Fla.

## Statement of 1950 Packing Shade Tobacco.

3142 lbs. No. 1 Wrappers @ \$.244	\$ 7,666.48
141 lbs. Off Color (Long) @ \$.200	282.00
125 lbs. Off Color (Short) @ \$.1.00	125.00
252 lbs. Brokes @ 1.25	315.00
20 lbs. Loose Leaves @ .40	8.00
8 lbs. Dark Wrappers @ .60	4.80
318 lbs. 5th Priming @ 1.50	477.00
1325 lbs. 7th Priming @ 1.50	1,989.00
571 lbs. Tops @ 1.00	571.00

---

\$11,438.28

## Advances

Cash Advanced	\$ 9,747.13
Labor	493.65
Rent	67.50
Baling Material	65.49
Insurance	61.91

---

\$10,435.71

Check Herewith

\$ 1,002.57

---

\$11,438.28



158

Received Payment:

(S.) J. C. BENTLEY

Copy

EXHIBIT A—No. 41.

J. T. Budd Jr. & Co.,  
Quincy, Fla.

January 5, 1951

Joe McNair  
Havana  
Florida

## Statement of 1950 Packing Shade Tobacco

1860 lbs. No. 1 Wrapper @ \$2.10	\$ 3,792.60
75 lbs. Brokes @ \$1.00	75.00
80 lbs. Tops @ \$1.00	80.00

---

 \$ 3,947.60

## Advances

Cash Advanced	\$ 2,979.68
Labor	132.37
Rent	30.00
Baling Material	21.24
Insurance	21.25

---

 \$ 3,184.54

Check Herewith	\$ 763.06
----------------	-----------

Received Payment:

(S.) JOE McNAIR  
By E. H. ROWAN



Copy

## EXHIBIT A—No. 45

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 5, 1951

Mr. P. J. Hammett  
Cairo  
Georgia

## Statement of 1950 Packing Shade Tobacco

650 lbs. No. 1 Wrappers @ \$2.43	\$ 1,579.50
45 lbs. Off Color (Long) @ \$2.00	90.00
36 lbs. Off Color (Short) @ \$1.00	36.00
36 lbs. Brokes @ \$1.25	45.00
15 lbs. Filler @ \$.40	6.00
281 lbs. 2nd Pr. @ \$1.75	491.75
446 lbs. 3rd Pr. @ \$2.00	892.00
490 lbs. 4th Pr. @ \$1.75	857.50
580 lbs. 6th Pr. @ \$1.50	870.00
187 lbs. Tops @ \$1.00	187.00
	<hr/>
	\$ 5,054.75
Advances	
Cash Advanced	\$ 4,373.73
Labor	189.01
Rent	30.00

160

Baling Material .....	30.09
Insurance .....	29.00

Check Herewith .....	\$ 4,651.83
	\$ 402.92

Received Payment:

(S.) P. J. HAMMETT

Copy

EXHIBIT A—No. 46.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 4, 1951

Mr. Jeff Shelfer  
Quincy  
Florida

## Statement of 1950 Packing Shade Tobacco

## 6-A Shade

7560 lbs. No. 1 Wrappers @ \$2.45 .....	\$18,544.05
912 lbs. Tops @ \$1.03 .....	939.36

## 16-A Shade

10190 lbs. No. 1 Wrappers @ \$2.85 .....	\$25,700.50
3535 lbs. 2nd Pr. @ \$2.02 .....	7,140.70
1933 lbs. Tops @ \$1.015 .....	1,962.00

161

Hillside

6413 lbs. No. 1 Wrappers @ \$1.975 ..... \$12,665.68

994 lbs. Tops @ \$1.00 ..... 994.00

---

\$67,946.29

## Advances

Cash Advanced ..... \$20,307.91

Labor ..... 3,049.30

Rent ..... 450.00

Baling Material ..... 302.67

Insurance ..... 319.46

---

\$24,429.34

Check Herewith ..... \$43,516.95

Received Payment:

(S.) J. SHELFER

Copy

EXHIBIT A—No. 47.

J. T. Budd Jr. &amp; Co.

Quincy, Fla.

January 4, 1951

Mr. Herbert H. Clark

Route 1

Chattahoochee, Florida

## Statement of 1950 Packing Shade Tobacco

4866 lbs. No. 1 Wrappers @ \$1.88 ..... \$ 9,148.08

1814 lbs. Tops @ \$1.00 ..... 1,814.00

---

\$10,962.08

162

## Advances

Cash Advanced	\$ 9,207.76
Labor	421.09
Rent	75.00
Baling Material	67.26
Insurance	66.82

\$ 9,837.93

Check Herewith \$ 1,124.15

Received Payment:

(S.) HERBERT H. CLARK

Copy

EXHIBIT A—No. 48.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 4, 1951

Mr. Joe McNair  
Calvary  
Georgia

## Statement of 1950 Packing Shade Tobacco

6895 lbs. No. 1 Wrappers @ \$2.27	\$15,651.65
449 lbs. Tops @ \$1.10	493.90
	<hr/>
	\$16,145.55

163

## Advances

Cash Advanced	\$15,048.67
Labor	655.98
Rent	75.00
Baling Material	67.26
Insurance	73.44

---

 \$15,920.35

Check Herewith	\$ 225.20
----------------	-----------

Received Payment:

(S.) JOE McNAIR

Copy

EXHIBIT A—No. 49.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 4, 1951

Mr. Arthur Womack  
Havana  
Florida

## Statement of 1950 Packing Shade Tobacco

10854 lbs. No. 1 Wrappers @ \$2.175	\$23,607.45
2154 lbs. Tops @ \$1.00	2,154.00
	<hr/>
	\$25,761.45



164

## Advances

Cash Advanced	\$13,000.00
Labor	1,540.30
Rent	120.00
Baling Material	113.28
Insurance	130.04

---

\$14,903.62

Check Herewith \$10,857.83

Received Payment:

(S.) A. WOMACK

Copy

EXHIBIT A—No. 50.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 4, 1951

Mr. Leo Harrison  
Route 2

Whigham, Georgia

## Statement of 1950 Packing Shade Tobacco

4346 lbs. No. 1 Wrappers @ \$2.275	\$ 9,887.15
431 lbs. Tops @ \$1.065	459.02
	<hr/>
	\$10,346.17

165

## Advances

Cash Advanced	\$ 6,641.03
Labor	428.02
Rent	45.00
Baling Material	49.56
Insurance	47.78

Check Herewith	\$ 7,211.39
	\$ 3,134.78

Received Payment:

(S.) LEO HARRISON

Copy

EXHIBIT A—No. 51.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 3, 1951.

Mr. D. E. Vickers

Route 2

Whigham, Georgia

## Statement of 1950 Packing Shade Tobacco

1950 lbs. No. 1 Wrappers @ \$1.75	\$ 3,412.50
565 lbs. Tops @ \$1.00	565.00
	\$ 3,977.50

## Advances

Cash Advanced	\$ 1,878.33
Labor	164.33
Rent	30.00

106

Baling Material .....	20.55
Insurance .....	25.15

Check Herewith .....	\$ 2,124.36
	\$ 1,853.14

Received Payment:

(S.) D. E. VICKERS

Copy

EXHIBIT A—No. 52.

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 4, 1951

Tylear Sanders  
Quincy,  
Florida

## Statement of 1950 Packing Shade Tobacco

2127 lbs. No. 1 Wrappers @ \$2.20 .....	\$ 4,679.40
396 lbs. Tops @ \$1.08 .....	427.68

---

\$ 5,107.08

## Advances

Cash Advanced .....	\$ 4,299.03
Labor .....	163.45
Rent .....	30.00

167

Baling Material .....	26.55
Insurance .....	25.23

Check Herewith .....	\$ 4,514.26
	\$ 562.82

Received Payment:

(S.) TYLEAR SANDERS, JR.

Copy

EXHIBIT A—No. 53

J. T. Budd Jr. & Co.  
Quincy, Fla.

January 3, 1951

Mr. J. G. Rudd  
Route 3  
Quincy, Florida

## Statement of 1950 Packing Shade Tobacco

2087 lbs. No. 1 Wrappers @ \$2.12 .....	\$ 4,424.44
61 lbs. Off Color (Long) @ \$2.50 .....	122.00
31 lbs. Off Color (Short) @ \$1.50 .....	46.50
43 lbs. Brokes @ \$1.25 .....	53.75
13 lbs. Filler @ \$.40 .....	5.20
219 lbs. Tops @ \$1.00 .....	219.00
	<hr/>
	\$ 4,870.89



168

## Advances

Cash Advance	\$ 4,370.93
Labor	172.94
Rent	30.00
Baling Material	28.32
Insurance	25.81

---

 \$ 4,628.00

---

 Check Herewith \$ 242.80

Received Payment:

(S.) J. G. RUDD

Copy

EXHIBIT A—No. 53a.

 United States Department of Agriculture  
 Farm Security Administration

1351

J. T. Budd & Co.  
Gentlemen—

Mr. John G. Rudd has paid maturities in 1950. Therefore, in final settlement on tobacco for 1950, his check need not be made joint.

Yours truly,

(S.) ALVAE WOFL  
Co. Supr.



169

Copy

## EXHIBIT A—No. 51

J. T. Budd Jr. & Co.  
Quincy, Fla.

2 January 1951

Mr. R. H. Barley  
Route 3  
Cairo, Georgia

## Statement of 1950 Packing Shade Tobacco

3091 lbs. No. 1 Wrapper @ \$1.90	\$ 5,872.90
106 lbs. Tops @ \$1.00	106.00

---

 \$ 5,978.90

## Advances

Cash Advanced	\$ 4,891.88
Labor	208.05
Rent	30.00
Baling Material	35.40
Insurance	32.01

---

 \$ 5,197.34

---

 Check Herewith \$ 781.56

Received Payment:

(S.) R. H. BARLEY

170

Copy

## EXHIBIT A—No. 55

Suber & Johnson  
A No. 185

Quincy, Fla. 1-31 1951.  
 Load of Hay  
 From Pluckett Bros  
 To Joe Budd Stable  
 Driver, on-off  
 Fees  
 Gross Wt. 30095 lbs.  
 Tare 13140 lbs.  
 Net Wt. 16955 lbs.  
 Net Bush

(S.) JR J Weigher

171

Copy

EXHIBIT A—No. 50

Received of J. T. Budd, Jr. \$224.65 for 16955# Hay @ 20¢/50

(S.) W. D. MOORE

Copy

EXHIBIT B—No. 4

J. T. Budd, Jr. & Co.  
Quincy, Fla.

Sept. 20, 1951.

Invoice:

H. Duys & Company  
c/o C. C. Hamilton & Company  
84 1/2 South Street  
New York, New York

Two (2) Bales 1950 Shade Crop Tobacco

Bales No. 583 171#  
584 170

341# Less 8—333# @ \$1.00 \$ 335.00

Copy

## EXHIBIT B—No. 2.

J. T. Budd, Jr. & Company  
Quincy, Fla.

January 16, 1951

Invoice:

Wedeles Brothers  
321 W. Lake Street  
Chicago, Illinois

C. T. &amp; Robert Williams, S.L.—1 Bale

No. 314—195—F—191\* @ \$1.25

\$ 238.75

Dried Loose Leaves—1 Bale

No. 709—195—F—155\* @ .75

116.25

\$ 355.00

Copy

## EXHIBIT B—No. 3.

J. T. Budd, Jr. & Company  
Quincy, Fla.

Aug. 10, 1951

Invoice:

H. Duns & Company, Inc.  
100 Wall Street  
New York, New York

Thirty-Eight (38) Bales 1950 Crop Tobacco

173

Clint Bassett—Tops—2 Bales

294 165\*

297 153

T. W. Fletcher—6th Pr.—1 Bale

424 172\*

M. J. Johnson—0 Tops—2 Bales

425 175\*

426 173

Ellis Maxwell—Tops—2 Bales

491 173\*

492 L&amp;@

All Crop—1 Bale

701 173\*

Gregory Brothers—Tops—12 Bales

362 167\*

364 166

366 165

367 166

368 166

369 166

370 167

371 167

372 168

373 169

374 164

375 166

Ben Brown—6th Pr.—1 Bale

509 164\*

510 163

511 162

512 166

174

R. F. Hopkins—5th Pr.—4 Bales

587 149\*

588 148

589 147

590 146

Leo Harrison—Tops—3 Bales

238 132\*

239 132

240 132

Howard Suber—Tops—5 Bales

403 151\*

404 149

405 150

406 150

407 152

Henry Davis—7th Pr.—2 Bales

519 173\*

520 174

Total 1950 Crop

6093*	Less 7152*	5941*
5941*	@ \$1.00	\$5,941.00

175

Copy

EXHIBIT B—No. 4.

J. T. Budd & Company  
Quincy, Florida

July 27, 1951

Weddes Brothers

324 Lake Street

Chicago, Illinois

Seven (7) Bales 1950 Crop Tobacco

No. 207 145\*

208 146

208A 144

222 176

594 186

706 198

707 177

1172\* Less 12—1141\* @ \$1.00

\$ 1,141.00



176

Copy.

## EXHIBIT B—No. 5.

J. T. Budd, Jr. & Company,  
Quincy, Florida

July 8, 1951

H. Darys & Company, Inc.  
106 Wall Street  
New York (5) New York

Seven Bales (7) 1950 Crop Tobacco

Arthur Womack—7th Pr.

127	160*
129	161
430	151
431	159
432	159
434	162
437	160

1122\* Net @ \$1.00

\$ 1,122.00

177

Copy

## EXHIBIT B—No. 6.

J. T. Budd, Jr. & Company  
Quincy, Florida

December 18, 1950

Wedeles Brothers  
321 West Lake Street  
Chicago 6, Illinois

9 Bales Florida Wrapper Tobacco—1950 Crop

* 461	John B. Smith, 2nd Pr.	166	1—162
462	ditto	3rd Pr.	161
463	ditto	3rd Pr.	161
464	ditto	3rd Pr.	160

482—12—470 lbs.

* 465	John B. Smith, 5th Pr.	163
466	ditto	165
467	ditto	165
468	ditto	163
469	ditto	160

816—20—796 lbs.

1128 lbs. @ \$1.50

\$2,142.00

178

Copy

## EXHIBIT B—No. 7.

J. B. Budd, Jr. & Co.  
Quincy, Fla.

25 October 1950

Invoice:

Wedeles Brothers  
321 W. Lake Street  
Chicago, Illinois

To:

One (1) Bale Wrappers—John B. Smith, 2nd Pr.

Bale No. 460—169 $\frac{1}{2}$  Less 4 $\frac{1}{2}$ —165 $\frac{1}{2}$  @ \$1.50 ..... \$ 247.50

Copy

## EXHIBIT B—No. 8.

J. B. Budd, Jr. & Co.  
Quincy, Florida

Dec. 1, 1950

Invoice:

Meerapfel Agricultural Corporation  
Quincy  
Florida

To:

One (1) Bale Light Wrapper—Sandleaf—Bale No.

1037—14—164 $\frac{1}{2}$  Less 4 $\frac{1}{2}$ —160 $\frac{1}{2}$  @ \$2.50 ..... \$ 400

179

Copy

## EXHIBIT B—No. 9

J. T. Budd, Jr. &amp; Co.

Quincy, Florida

Invoice:

H. Duys &amp; Company, Inc.

106 Wall Street

New York 5, New York

Terms: 3% Cash

To:—

Seven (7) Bales Sandleaf Wrappers—1590 Crop

No.	13	150*
	18	157
	52	161
	54	154
	55	154
	55	163
	67	161
	108	164

1116*	Less 28*	—1088*	@ \$3.50 per lb.	\$ 3,803.00
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180

Copy

## EXHIBIT B—No. 10

J. T. Budd, Jr. &amp; Co.

Quincy, Fla.

Invoice:

H. Duys &amp; Company, Inc.

106 Wall Street

New York 5, N. Y.

Terms: 3% 30 days

4 Bales Lt. Wrapper—Mid.

No.	150	155*
	186	149
	207	162
	301	151

617*	Less 16*	—601*	@ \$3.00	\$ 1,803.00
------	----------	-------	----------	-------------

2 Bales Lt. Wrapper—S. D.

No.	14	163*
	61	163

326*	Less 8*	—318*	@ \$3.50	\$ 1,113.00
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Total	\$ 2,916.00
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181

Copy

## EXHIBIT B—No. 11.

J. T. Budd, Jr. & Co.  
Quincy, Fla.Invoice:  
Wedeless Brothers  
321 W. Lake Street  
Chicago, Illinois

Clint Bassett—Tops—5 Bales

No.	295	160
	296	161
	298	159
	299	159
	300	159

798\*—20\* 778\* @ \$1.50

\$ 1,167.00

182

Copy

## EXHIBIT B—No. 12.

J. T. Budd, Jr. & Co.  
Quincy, Florida

March 2, 1951

Invoice:  
Reyes Cigar Company  
Quincy  
Florida

To:

One (1) Bale 1950 Shade Hammett Crop, Bale No. 611

166—4—162\* @ \$2.25— \$ 364.00

Copy

## EXHIBIT B—No. 13.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

April 15, 1951

Invoice:  
Mr. Ivis J. Scadron  
Quincy  
Florida



183

Six (6) Bales Pull Outs—

No.	1	177*
	2	175
	3	175
	4	175
	5	175
	6	174

1051\* Less 24\* — 1027 \* Net @ .60

\$ 616.20

(1950 Crop)

Copy

EXHIBIT B—No. 14.

J. T. Budd, Jr. & Co.  
Quincy, Fla.

May 7, 1951

Invoice:

Wedeles Brothers

321 W. Lake Street

Chicago, Illinois

Terms: 3% Cash

Four (4) Bales H. L. McKeown Tops (1950 Shade).

No.	171*	151*
	172	150
	173	150
	173A	152

603\* Less 16\* — 587\* @ \$1.15

\$ 675.05



121

JAMES P. MITCHELL VS. JOSEPH T. BUDD, JR.

181

Copy

EXHIBIT B—No. 15.

J. T. Budd, Jr. & Co.  
Quincy, Florida

Oct. 25, 1950.

Invoice:

Terms: 3% 30 days

H. Dusy &amp; Company, Inc.

106 Wall Street

New York (5) New York

Five (5) Bales Sandleaves; Loose Leaves

No.	65	174*
	76	161
	98	169
	99	163
	100	165

832\* Less 20\* = 812\* Net @ .60  
per lb.

\$ 487.20

Eighteen (18) Bales Looseleaves:

No.	153	166*
	187	167
	204	167
	205	174
	236	177
	281	175
	338	170
	375	161

12

185

426	175
467	181
573	180
624	176
683	177

2249\$ Less 52\$ = 219\$ Net @ \$.60 per lb. \$ 1,318.20

Total \$ 1,805.40

Copy

EXHIBIT B—No. 16.

J. T. Budd, Jr. & Company  
Quincy, Fla.

Oct. 30, 1950

Invoice:

Macapfel Agricultural Corp.  
Quincy, Florida

Eleven (11) Bales Light Wrapper Sand Leaves

* 1026	14"	167
1027	13"	165
1028	12"	167
1029	13"	166
1030	14"	161
1031	12"	162
1032	13"	164

186

1033	14"	168
1034	13 1/4	157
1035	12 1/3	157
1036	11 1/2	158

1792<sup>8</sup> — 44 — 1748 lbs. @ \$2.50 . . . \$ 4,370.00

## Thirty-nine (39) Bales No. 2 Sand Leaves

* 1059	157	1081	163*
1060	157	1082	162
1061	163	1083	176
1062	158	1084	163
1063	164	1085	163
1064	160	1086	158
1065	153	1087	160
1066	149	1088	161
1067	147	1089	163
1068	157	1090	162
1069	161	1091	159
1070	161	1094	158
1071	153	1093	161
1072	156	1094	169
1073	160	1095	164
1074	168	1096	159
1075	153	1097	154
1076	170		
1077	162	6253 — 156 — 6997	lbs. @
1078	162		\$1.75
1079	162		
1080	162		

Total . . . \$15,039.75

187

Copy

## EXHIBIT B—No. 17

J. T. Budy, Jr. & Company  
Quincy, Florida

Jan. 2, 1951

Ben E. Mann  
221 East Chestnut Street  
Lancaster, Pennsylvania

## Invoice

12 Bales—1950 Florida Wrappers

Jeff Shaffer—1 Bales

* 301	176
302	177
303	176
304	175

704—16—688\* @ \$2.50 ..... \$ 1,720.00

Raymond Poppell—2 Bales

* 552	133*
553	130

263—8—255\* @ \$2.00 ..... \$ 510.00

Rubin Jordan—2 Bales

* 506	168
507	166

334—8—326\* @ \$2.75 ..... \$ 895.50

128

JAMES P. MITCHELL VS. JOSEPH T. BULL, JR.

188

Glover Kemp

\$ 592 140\$  
 593 135

275—8—267\$ @ \$2.50

\$ 667.50

P. J. Hammett

\$ 606 153\$  
 607 152  
 608 153

458—12—416\$ @ \$2.75

\$ 1,226.50

\$ 5,020.50

Copy

EXHIBIT B—No. 48

J. T. Bull, Jr. & Co.  
 Quincy, Fla.

January 18, 1951

Invoice:

H. Duys &amp; Company, Inc.

106 Wall Street

New York 5, New York

To:—

Terms: Cash Less 3%

L3. Wrapper S. 1.—14 Bales @ \$3.50

No. 1002 165\$

1008 158

1009 170



189

1014	156
1016	154
1019	155
1020	158
1025	152
1030	150
1036	153
1039	164
1040	163
1041	163
1042	137

2196~~s~~—50~~s~~—2140~~s~~ @ \$3.50

8 7 490 0

Arthur Wonnack—5 Bales @ \$1.50

No. 428	169 <del>s</del>
433	169
435	168
436	170
438	160

836~~s~~—20~~s~~—816~~s~~ @ \$1.50

1,224 0

Lt. Wrapper Mids—8 Bales @ \$3.00

No: 2010	160 <del>s</del>
2015	152
2017	159
2018	157
2024	148
2032	154
2055	161
2057	174

1262~~s~~—32—1230~~s~~ @ \$3.00

3,690 0

190

Gregory Brothers—13 Bales @ \$2.00

No.	349	467*
	350	168
	351	174
	353	171
	352	168
	354	171
	355	168
	356	169
	357	168
	358	168
	359	167
	360	169
	361	165

2193\*—52\*—2141\* @ \$2.00

Joe McNair—2 Bales @ \$2.25

No.	273	170*
	274	170

340\*—8\*—332\* @ \$2.25

Jack McFarlin—2nd Pr—6 Bales @ \$1.75

No.	521	160*
	522	174
	523	165
	524	163
	525	164
	526	162

988\*—21\*—964\* @ \$1.75

Jack McFarlin—3rd Pr—7 Bales @ \$1.75

No.	527	164*
	528	166

191

529	164
530	159
531	163
532	162
533	167

1145\*—28\*—1117\* @ \$1.75

1,954.75

P. J. Hammett—4 Bales @ \$1.75

No. 613	147*
613	148
614	148
614A	148

591\*—16\*—575\* @ \$1.75

1,006.25

Glen Griffith—6 Bales @ \$1.75

No. 252	172*
253	172
254	169
255	173
256	171
257	171

1028\*—24\*—1004\* @ \$1.75

1,757.00

C. T. Williams—3 Bales @ \$1.75

No. 197	161*
198	161
199	159

481\*—12\*—469\* @ \$1.75

820.75

192

C. T. Williams—2 Bales @ \$1.75

No. 200 183\*

201 187

370\*—8\*—362\* @ \$1.75

\$ 631.50

C. T. Vandandine—3 Bales @ \$1.75

No. 118 159\*

119 159

120 161

479\* Less 12\*—467\* @ \$1.75

\$17.25

Worth Suber—7 Bales @ \$1.75

No. 453 157\*

454 158

455 158

456 159

457 160

458 161

459 159

1112\*—28\*—1084\* @ \$1.75

1,897.00

Marvin Suber—5 Bales @ \$1.75

No. 247 168\*

248 169

249 168

250 170

251 168

843\*—20\*—823\* @ \$1.75

1,440.25

193

W. B. Smith—2 Bales @ \$1.75

No. 346 172\*

347 173

345\*—8\*—337\* @ \$1.75

589.75

D. E. Vickers—3 Bales @ \$2.00

No. 497 148\*

498 150

499 152

450\* less 12\*—438\* @ \$2.00

876.00

Otha Rowan—2 Bales @ \$1.75

No. 514 138\*

515 142\*

280\*—8\*—272\* @ \$1.75

476.00

Total

\$31,388.50

Copy

EXHIBIT B—No. 19

J. T. Budd, Jr. &amp; Co.

January 5, 1951

Wedeles Brothers

321 W. Lake Street

Chicago, Illinois

J. C. Bentley—Tops—4 Bales @ \$1.50

No. 615 146\*

616 148



194

617	147
618	146

587\*—16\*—571\* @ \$1.50

\$ 856.50

Oscar Dean—7th Pr.—2 Bales

No. 121	154*
122	156

310\* Less 8\*—302\* @ \$1.50

153.00

T. W. Fletcher—3 A Tops—2 Bales

No. 188	157*
189	158

315\* Less 8\*—307\* @ \$1.50

160.50

Jones &amp; Watson—6th Pr.—2 Bales

No. 190	125*
191	125

250\* Less 8\*—242\* @ \$3.00

726.00

Steve Dolan—8th Pr.—2 Bales

No. 205	190*
206	188

378\* Less 8\*—370\* @ \$2.50

925.00

W. C. Jones—8th Pr.—6 Bales @ \$2.50

No. 224	175*
225	175
226	174
227	173

195

228	175
229	176

1048\* Less 24\* — 1024\* @ \$2.50 2,560.00

Marvin Suber—No. 1 Tops—2 Bales

No. 245	168*
246	168

336\* Less 8\* — 328\* @ \$1.50 492.00

Joe McNair—5th Pr.—3 Bales

No. 258	182*
259	183
260	182

547\* Less 12\* — 535\* @ \$2.75 \$ 1,471.25

Joe McNair—6th Pr.—4 Bales @ \$2.75

No. 493	180*
494	182
495	179
496	183

724\* Less 16\* — 708\* @ \$2.75 \$ 1,947.00

Joe McNair—7th Pr.—7 Bales

No. 261	160*
262	159
263	162
264	160
265	1
266	163
267	158

1126\* Less 28\* — 1098\* @ \$2.50 2,745.00

196

Joe McNair—8th Pr.—5 Bales

No.	268	187*
	269	185
	270	186
	271	183
	272	184

925\* Less 20\*—905\* @ \$2.25 2,036.25

Joe McNair—Tops—3 Bales

No.	275	132*
	276	135
	277	134

401\* Less 12\*—389\* @ \$1.50 583.50

A. M. Haire—Tops—2 Bales

No.	278	157
	279	161

318\* Less 8\*—310\* @ \$3.00 930.00

A. M. Haire—Tops—2 Bales

No.	280	182
	281	191

373\* Less 8\*—365\* @ \$1.50 547.50

Carl Haire—9th Pr.—2 Bales

No.	451	151*
	452	149

300\* Less 8\*—292\* @ \$1.50 438.00

197

Gregory Brothers—Tops—2 Bales @ \$1.50

No. 363	172*
365	171*

343\* Less 8\* — 335\* @ \$1.50

\$ 502.50

Herbert Clark—7th Pr.—9 Bales

No. 390	182*
391	170
392	178
393	178
394	180
395	178
396	181
397	177
398	177

1610\* Less 36\* — 1574\* @ \$1.50

\$ 2,361.00

T. W. Fletcher (Fl. Shade) 7th Pr.—2 Bales

No. 420	174*
421	176

350\* Less 8\* — 342\* @ \$1.50

\$ 513.00

John B. Smith—6th Pr.—4 Bales

No. 470	158*
471	155
472	157
473	158

628\* Less 16\* — 612\* @ \$1.50

\$ 918.00

W. T. Süber—Tops—3 Bales

No. 485	180*
---------	------

198

486 181  
487 180

541\* Less 12\*—529\* @ \$1.50 \$ 793.00

No. 541 174\*  
542 173  
543 176  
544 173  
545 173\*  
547 175  
548 174

1391\* Less 32\*—1359\* @ \$1.50 \$ 2,038.50

Jack McFarlin—Tops—3 Bales

No. 549 173\*  
550 190  
551 183

546\* Less 12\*—534\* @ \$1.50 \$ 801.00

Raymond Coppel—6th Pr.—1 Bale

No. 558 178\* Less 4\*—174\* @ \$1.50 \$ 261.00

G. G. Thomas—8th Pr.—3 Bales

No. 578 149\*  
579 149  
580 152

450\* Less 12\*—438\* @ \$2.50 \$ 1,095.00

G. G. Thomas—9th Pr.—1 Bale

No. 581 163\* Less 4\*—159\* @ \$1.50 \$ 238.50



199

Glover Kem—Tops—1 Bale

No. 595 191\* Less 4\* = 187\* @ \$1.50

\$ 280.50

G. G. Thomas—7th Pr.—3 Bales

No. 575 145\*

576 145

577 134

424\* Less 12—412\* @ \$2.75

\$ 1,133.00

\$28,107.00

Copy

EXHIBIT B—No. 20.

January 2, 1951

Invoice:

Constantino Gonzales Y Ca.,

79 Wall Street

New York 5, New York

Invoice:

60 Bales 1950 Florida Wrappers:

No. 126 156 393 141

145 157 394 140

161 159 413 160

163 166 415 162

176 169 490 156

177 170 548 137

178 163 549 141

179 170 550 138

188 155 597 162

189 153 611 158

191 159 612 155

200

195	162	639	163
200	162	643	169
201	163	660	169
292	173	669	154
203	162	673	163
210	160	681	167
215	156	682	167
216	150		

219	161	9646—240—9406*	@ \$1.75	\$16,460.50
-----	-----	----------------	----------	-------------

224	159	21 Bales 1950 Florida Wrappers		
-----	-----	--------------------------------	--	--

229	161	116	163	\$ 491	161
-----	-----	-----	-----	--------	-----

231	157	143	162	572	162
-----	-----	-----	-----	-----	-----

235	163	144	153	666	161
-----	-----	-----	-----	-----	-----

244	169	160	164	3365—84—3281*	
-----	-----	-----	-----	---------------	--

245	164	162	159	@ \$1.50	4,921.50
-----	-----	-----	-----	----------	----------

246	170	190	143	Total	\$21,382.00
-----	-----	-----	-----	-------	-------------

247	172	280	177		
-----	-----	-----	-----	--	--

258	163	305	158		
-----	-----	-----	-----	--	--

259	155	306	163		
-----	-----	-----	-----	--	--

263	160	323	158		
-----	-----	-----	-----	--	--

278	185	331	161		
-----	-----	-----	-----	--	--

279	167	384	163		
-----	-----	-----	-----	--	--

286	157	395	141		
-----	-----	-----	-----	--	--

313	163	414	158		
-----	-----	-----	-----	--	--

337	161	445	167		
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349	162	446	165		
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354	159	466	165		
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361	163	465	168		
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362	163				
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368	168				
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374	155				
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10. That the tobacco referred to in Request Number 9 above  
 as being sold by defendants to customers located without  
 203 the state of Florida has been or will, in the normal course  
 of business, be removed from defendants' warehouse to points  
 without the state of Florida.

(S.) WILLIAM S. TYSON,

*Solicitor.*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney.*

(S.) ROBERTSON C. HESSE,

*Attorney, United States Department of Labor, Attorneys for Plaintiff.*

Certificate of Service. (Omitted in printing)

204 IN UNITED STATES DISTRICT COURT

ANSWER TO REQUEST FOR ADMISSION OF FACTS. Filed April 10, 1952

Come now the defendants in accordance with the requirements of Rule 36, Federal Rules of Civil Procedure, and admit the request made to the defendants in the manner following:

1. The defendants admit the statement of fact contained in Paragraph 1 of the Request for Admission of Fact.

2. The defendants admit the statement of fact contained in Paragraph 2 of the Request for Admission of Fact.

3. The defendants admit the statement of fact contained in Paragraph 3 of the Request for Admission of Fact.

4. The defendants admit the statement of fact contained in Paragraph 4 of the Request for Admission of Fact.

5. The defendants admit the statement of fact contained in Paragraph 5 of the Request for Admission of Fact.

6. The defendants admit the statement of fact contained in Paragraph 6 of the Request for Admission of Fact.

205 7. The defendants admit the statement of fact contained in Paragraph 7 of the Request for Admission of Fact.

8. The defendants admit the statement of fact contained in Paragraph 8 of the Request for Admission of Fact.

9. The defendants admit the statement of fact contained in Paragraph 9 of the Request for Admission of Fact.

10. The defendants admit the statement of fact contained in Paragraph 10 of the Request for Admission of Fact.

CALDWELL, PARKER, FOSTER & WIGGINTON,

BY (S.) JULIUS F. PARKER,

*Attorneys for Defendants.*

(Certificate of Service (omitted in printing))

206

## IN UNITED STATES DISTRICT COURT

NOTICE OF AND MOTION FOR CONTINUANCE—Filed April 17, 1952

To: Julius F. Parker, Attorney for the Defendants.

Please take notice that on the 21st day of April, 1952, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, at the Courtroom of the Court in the City of Tallahassee, State of Florida, the undersigned will move for a general continuance of the above-entitled action, because there are not sufficient funds available to the plaintiff with which to pay the costs and expenses necessarily incident to a trial of this cause. Plaintiff states, however, that such funds will be available to him after June 30, 1952, the close of the fiscal year, and that thereafter he will stand ready for trial at any date convenient to the Court and counsel.

Dated the 16th day of April, 1952.

(S. WILLIAM S. TYSON,

*Solicitor,*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney,*

(S.) ROBERTSON C. HESSE,

*Attorney,**United States Department of Labor,**Attorneys for Plaintiff.*

207

Certificate of Service (omitted in printing)

## IN UNITED STATES DISTRICT COURT

ORDER CONTINUING CAUSE—April 21, 1952

On this day, for good and sufficient cause shown the Court, it is ordered by the Court that this case be and the same is now hereby continued until such future date as may suit the convenience of the Court.

Dated the 21st day of April, 1952.

(S.) DOZIER A. DEVANEY,

*District Judge.*

208

## IN UNITED STATES DISTRICT COURT

STIPULATION FOR SUBSTITUTION OF PARTY PLAINTIFF—Filed February 11, 1953

It is hereby stipulated that Martin P. Durkin is now the duly appointed and qualified Secretary of Labor, United States Department of Labor, his appointment as Secretary of Labor by Dwight



Dr. Eisenhower, President of these United States, having been confirmed by the Senate of these United States on January 21, 1953, and that said Martin P. Durkin has succeeded to all the rights, duties and functions heretofore vested in the plaintiff, Maurice J. Tobin, former Secretary of Labor, and that said Martin P. Durkin, Secretary of Labor, may be substituted herein as plaintiff in the place and stead of the said Maurice J. Tobin, and that an order may be entered herein to that effect and that this cause may be continued and maintained by said Martin P. Durkin as Secretary of Labor.

Dated this 2nd day of February, 1953.

(S.) WILLIAM S. TYSON,

*Solicitor,*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney,*

(S.) ROBERTSON C. HESSE,

*Attorney,*

*United States Department of Labor,*

*Attorneys for Plaintiff.*

JOSEPH T. BUDD, JR., Et al.,

By (S.) JULIUS F. PARKER,

*Attorney for Defendants.*

209 &

In United States District Court

ORDER OF SUBSTITUTION—Filed February 11, 1953

The parties hereto having stipulated that Martin P. Durkin is now the duly appointed and qualified Secretary of Labor, United States Department of Labor, and that as such he has succeeded to all the rights, duties, and functions of Maurice J. Tobin, heretofore appearing as the Secretary of Labor, United States Department of Labor and the plaintiff in this cause; and that said Martin P. Durkin, Secretary of Labor, be substituted as plaintiff herein in the place and stead of said Maurice J. Tobin, it is:

Ordered that Martin P. Durkin, Secretary of Labor, be and he hereby is substituted as plaintiff herein in the place and stead of Maurice J. Tobin, former Secretary of Labor, without prejudice to the proceedings already had in this action, and that this cause may be continued and maintained by said Martin P. Durkin, Secretary of Labor.

Dated this 11th day of February, 1953.

(S.) DOZIER A. DeVANE,

*United States District Judge.*



210

## IN UNITED STATES DISTRICT COURT

MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT—Filed August 3,  
1953

Comes now the plaintiff by his attorney and hereby moves the Court to enter summary judgment for the plaintiff, in accordance with Rule 56 of the Federal Rules of Civil Procedure, on the ground that the pleadings, interrogatories, answers to interrogatories, requests for admissions and admissions of facts, and all other documents and papers filed in this cause and all the proceedings heretofore had herein, show that there is no genuine issue as to any material fact and the plaintiff is entitled to judgment as a matter of law.

(S.) STUART ROTHMAN,

*Solicitor.*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney.*

(S.) H. GRADY KIRVEN,

*Attorney, United States Department of Labor.**Attorneys for Plaintiff.*

Certificate of Service (omitted in printing)

211- MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT—Filed  
August 5, 1953

Come now defendants, by their undersigned attorneys, and move the Court to enter summary judgment for the defendants on the grounds that the pleadings, interrogatories, and answers thereto, admissions of fact, and other evidentiary matters filed in the cause show that there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.

(S.) JOHN T. WIGGINTON,

OF CALDWELL, PARKER,

FOSTER &amp; WIGGINTON,

*Attorneys for Defendants.*

Certificate of Service (omitted in printing)

212

## IN UNITED STATES DISTRICT COURT

MEMORANDUM DECISION—Filed and entered September 29, 1953

U. S. Type 62 Sumatra tobacco is a leaf tobacco grown and used extensively for cigar wrappers and grown exclusively in two areas in Florida and one small area in Georgia. The principle area where this tobacco is grown is in Gadsden and Leon Counties, Florida and in Decatur and Grady Counties, Georgia, contiguous to the Florida

counties named above. All this type of tobacco grown in these counties is grown within an airline radius of thirty miles of the town of Quincy in Gadsden County, Florida and is processed and packed in packing houses located chiefly in and around Quincy. In the Quincy area of production there are 300 farmers growing this type of tobacco of which 80% grow and harvest less than 25 acres per year. A small amount of this type of tobacco is also grown in Madison County, Florida.

### History of Litigation.

Plaintiff Originally brought suit against Joseph T. Budd, Jr. and Florence W. Budd, co-partners, doing business as J. T. Budd, Jr. and Company, to enjoin this company from violation of the Fair Labor Standards Act (29 USCA; Sec. 201 et seq). This suit was instituted on February 10, 1951. The facts in the case, as disclosed by the pleadings and supporting evidence filed in the case, show that the Budd Company grows no Type 62 tobacco, but operates a packing house where it processes the tobacco grown by many small farmers.

At a pre-trial conference held in February, 1952, after the case was at issue, it developed that of the 11 remaining packing houses in the Quincy area processing type 62 tobacco for shipment and sale, and who had not complied with the Fair Labor Standards Act, 6 processed, in addition to tobacco grown by themselves, tobacco grown by others, and the remaining 5 processed tobacco grown by themselves alone.

It was obvious to the Court, at the conclusion of the pretrial conference, that the Budd Company operation was in violation of the Fair Labor Standards Act. A decision to that effect in that case would have adversely affected the 6 other operators not in compliance with the Act, who process and pack tobacco grown by small farmers. It also appeared to the Court at that time that any decision in the Budd Case would not immediately affect the packing house operators who process their own tobacco exclusively, the overall result would have been disastrous to the small growers of Type 62 tobacco. Therefore, the Court insisted that before decision in the Budd Case, the Administrator bring suit against an operator processing tobacco grown exclusively by it, so that the Court could determine whether the Act was applicable to their packing house operations as well. The Administrator, accordingly, brought suit against the King Edward Tobacco Company of Florida. This suit was filed on March 23, 1952. The May Tobacco Company intervened and is a party defendant in this suit.

The nature of the alleged violations in the King Edward Tobacco Company case are the same as those alleged in the

Budd case. When this case became at issue on the pleadings and supporting evidence introduced by the parties, defendant King Edward Tobacco Company, filed a motion for summary judgment contending that the essential facts were not in dispute and that on the undisputed facts defendant is exempt from the Fair Labor Standards Act, under Clauses (6) and (10) of Section 213(a) of the Act. Because of collateral factual issues raised by plaintiff in this case, which the plaintiff was unwilling to waive at that time, the Court was compelled to and did, deny defendant's motion for summary judgment.

At a pre-trial conference held in this case and in the Budd case, on a later date, the Court announced to the respective parties that in its opinion the essential facts in each of these cases are not in dispute and that upon each party plaintiff and defendant waiving the unessential questions raised in their pleadings and supporting evidence by filing motions for summary judgment the Court would pass upon these motions and determine whether the operations of these defendants at their packing houses are subject to the Fair Labor Standards Act.

Due, however, to the effect such a decision would have upon these defendants, should the decision go adversely to them, by leaving all their competitors free from compliance with the Act until their cases were adjudicated, the Court further suggested, and the Administrator acquiesced in the proposal of the Court, that

suits be brought against every packing house operator in the Quincy area not in compliance with the Act and that these cases be brought to issue in the same way as the cases then before the Court. This has been done. There are 15 packing houses operating in this area. Similar suits are now pending against the operators of 12 of these packing houses which are at issue. The essential facts in each case are not in dispute and the sole question before the Court is whether packing house employees are exempt under Clauses (6) and (10) of Section 213(a) of the Act.

The Court is now in position to render judgment in all these cases that will be applicable to all of them alike at the same time and no injustice will be done anyone, however the cases may go. The remaining 3 packing houses have complied with the provisions of the Act.

#### Method of Growing, Harvesting and Marketing Type 62 Shade Leaf Tobacco.

Type 62 shade leaf tobacco requires special and painstaking cultivation, harvesting, curing and preparation for market. It grows in fields enclosed in a cheesecloth shade, which completely covers and incloses the tobacco field. The cheese cloth is supported by wires strung on posts placed at regular intervals through the fields.

It is highly fertilized and intensively cultivated during the growing period. When each leaf reaches a certain stage of maturity it is promptly harvested. This harvesting process is known as "priming". The lower leaves are picked first, perhaps not more than two or three from each stalk. This picking is repeated as the tobacco matures on up the stalk until all the marketable  
216 leaves have been removed. At each priming the tobacco is immediately taken to a tobacco barn located on the farm where it is strung on sticks and dried by means of heat. When the tobacco is almost completely dried the drying process is interrupted and it is permitted to absorb moisture and again dried. This drying process is repeated until the tobacco has reached a stage in the process of curing when it is ready for the packing house.

It is then taken from the barns in the field, placed in appropriate containers and carried to the packing house where it is placed in piles known as "bunks" for curing. Each bunk consists of more than 3000 lbs. of tobacco. The packing houses are equipped with machinery for the appropriate humidification and curing of the tobacco. During the curing period the temperature within each bunk is closely watched from day to day and at regular intervals, when the appropriate time has arrived, the bunk is broken up, the tobacco leaves shaken out and those on the outside placed on the inside of the new bunk and those on the inside placed on the outside for further curing. This process is continued until the tobacco is ready for market when it is baled for shipment.

In the Quincy area, for the year 1950, approximately 2554 acres were planted to type 62 shade leaf tobacco. Of this total acreage 1459 acres were grown by companies operating packing houses that handled no tobacco save that produced by them. Small producers owning no packing houses but depending on others for the preparation of their tobacco for market grew 784 acres and  
217 the packing houses that processed this tobacco also grew and processed for their own account 311 acres.

#### The Budd Case.

The Budd Company grows no tobacco for its own account, but processes and prepares for market in its packing house tobacco grown by others. For the year 1950 this company processed the tobacco grown by 52 small farmers on 263 acres. The Budd Company entered into a contract with each of these farmers under which each farmer theoretically took over the packing house with all its equipment and the employees (approximately 108) of the Budd Company for the processing of his own tobacco and sold the tobacco, when processed, to the Budd Company. A system of book-keeping was set up by which each farmer paid to the Budd Company the actual cost of the processing of the tobacco grown by him.



and the Budd Company paid the employees. During the year 1950, 333,889 lbs. of tobacco of these 52 farmers was processed in the Budd Company's packing house. It was all purchased by the Budd Company. The Budd Company sold 231,209 lbs. of this tobacco to the Budd Cigar Company, a corporation of Quincy, Florida. The remainder of the tobacco was sold to other persons, firms or corporations, much of which went into interstate commerce.

Little need be said as to the plan adopted by the Budd Company to circumvent the Fair Labor Standards Act. The arrangement was conceived and put into effect solely for this purpose. This law may not be circumvented in this manner and the plan adopted did not accomplish the result desired. The Budd Company operations are clearly subject to the provisions of the Fair Labor Standards Act, with reference to the compensation of all employees working on the tobacco or in connection therewith in the Budd packing house. *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U. S., 755; *McComb & Super-A Fertilizer Works, Inc.*, 165 Fed. 2nd, 824.

#### The King Edward Tobacco Company Case.

In the King Edward Tobacco Company case the facts are entirely different from those in the Budd case. During the year 1950 the King Edward Tobacco Company cultivated 206 acres of Type 62 shade leaf tobacco. The process of growing, harvesting and drying this tobacco in the barns on the farms where the tobacco was grown and in bulking, curing and preparing the tobacco for market in the packing house was the same as that generally outlined heretofore.

When the tobacco reached the stage in the process of curing, when it was ready for the packing house, the King Edward tobacco Company took it to one of its packing houses where no other tobacco was processed and made ready for market.

The King Edward Tobacco Company operates two other packing houses where tobacco grown by others is processed and made ready for market and defendant concedes that these packing house operations are subject to the Act, but as it uses the packing house involved in this suit to process tobacco grown only by it, it claims exemption for this operation from the provisions of the Act. The tobacco processed by the defendant in this packing house is sold chiefly to an affiliate of the defendant.

The packing house in question is located within the corporate limits of Quincy, Florida and is not located on any of the farms operated by defendant. In this case the issue is whether the packing house employees are entitled to the benefits of the Fair Labor



Standards Act or whether defendant's operations are exempt therefrom under Clauses (6) and (10) of Section 213(a) of the Act.

Plaintiff concedes that all labor employed in the growing, harvesting and handling of the tobacco up to the time it reaches the platform of the packing house is exempt, but as soon as this tobacco is delivered to the packing house, all employees engaged in the handling of it thereafter or who work in any other capacity in connection with its handling, are subject to the Act. Defendant's position is that the farming operation in connection with the handling of this tobacco does not cease until the tobacco is prepared for market and made ready for shipment, which would exclude every employee in the packing house working thereon or in connection therewith.

This question has been before the Court in numerous cases and there is some conflict among the decisions as to where the farming exemptions end and the Wages and Hours provisions of the Fair Labor Standards Act applies. *Comp. Fleming v. Farmer's Peanut Co.* (5th Cir.), 128 Fed. 2nd, 404 and *Puerto Rico Tobacco Marketing Cooperative Ass'n v. McComb* (1st Cir.), 181 Fed. 2nd, 697.

On the same day the Court of Appeals, 5th Circuit, decided 220 *Fleming v. Farmers Peanut Company*, *supra*, it also decided *Fleming v. Jacksonville Paper Company, et al.*, 128 Fed. 2nd, 395. While the Court of Appeals reversed the Jacksonville Paper Company case the reversal was on very narrow grounds, as disclosed by the Opinion in that case. The Administration carried the Jacksonville Paper Company case to the United States Supreme Court—see—*Walling, Adm. v. Jacksonville Paper Company*, 317 U. S., 564. The Supreme Court affirmed the judgment of the Court of Appeals, 5th Circuit, reversing the District Court in that case, but in so doing held the Court of Appeals adopted "too narrow a construction of the Act" in its Opinion in that case.

In all cases it is not easy to draw the line, but based upon the reasoning in the later cases it is not difficult to draw the line in this case. This Court finds and holds that upon the record in this case the farming exemption ends when the tobacco reaches the receiving platform of the packing house for processing and packing purposes for use or sale in the market. The Court considers it unnecessary to labor this point as this question has been sufficiently considered and expounded in the cases relied upon by this Court to sustain its findings and holdings therein. *Walling, Adm. v. Jacksonville Paper Company*, 317 U. S., 564; *Farmer's Reservoir & Irrigation Co. v. McComb*, 337 U. S., 755; *Wailana Agr. Co. v. Mabea*, 97 Fed. Supp., 198; *Calafsky, Gonzales*, 127 Fed. 2nd, 934; *Vines, et al. v. Serralls*, 145 Fed. 2nd, 552 and *Walling Adm. v. Connecticut Co.*, 154 Fed. 2nd, 552. Having found and held that the farming ex-

221 exemption ends when the tobacco reaches the receiving plat-  
forms of the packing house, it is unnecessary to consider the  
relative scope and effect of Clauses (6) and (10) of Section  
213(a) of the Act in this case.

### May Tobacco Company Case

The May Tobacco Company case is in every respect similar to that of the King Edward Tobacco Company case. The May Tobacco Company grew 907 acres of Type 62 shade leaf tobacco in 1950 and processed in its packing house tobacco grown exclusively by it. For the reasons stated above with reference to the application of the Fair Labor Standards Act to the King Edward Tobacco Company the Court finds and holds that the packing house operations of the May Tobacco Company are also subject to the provisions of the Act.

An appropriate judgment will be entered in the Budd Case, the King Edward Case and the May case in conformity with this Memorandum Decision.

What the Court has held in the Budd Case, the King Edward Tobacco Company Case and the May Case is equally applicable to each of the other cases pending before the Court and upon plaintiff filing a motion for summary judgment in each case a short memorandum decision, referring to the decision in these cases, will be filed in those cases and a final judgment entered in each case accordingly.

Dated at Tallahassee, Florida, this 29th day of September, 1953.

(S.) DOZIER A. DeVANE,

*United States District Judge.*

222

### IN UNITED STATES DISTRICT COURT

ORDER FOR SUBSTITUTION OF PARTY PLAINTIFF—Filed November 14,  
1953

It having been satisfactorily shown to this Court that James P. Mitchell is the duly appointed and qualified Secretary of Labor, United States Department of Labor, and that as such Secretary of Labor, United States Department of Labor, he has succeeded to all of the rights, duties and prerogatives of Martin P. Durkin, heretofore appearing as the Secretary of Labor, United States Department of Labor, and the plaintiff in this cause, and it appearing that there is substantial need for continuing and maintaining the above-entitled action, it is, therefore, on motion of attorneys for plaintiff,

Ordered, Adjudged and Decreed that the said James P. Mitchell, Secretary of Labor, United States Department of Labor, be, and he

hereby is substituted as plaintiff herein in the place and stead of Martin P. Durkin, formerly Secretary of Labor, United States Department of Labor, without prejudice to the proceedings already had in this action, and that this cause may be continued and maintained by said James P. Mitchell, Secretary of Labor, United States Department of Labor.

Dated: November 13, 1953.

(S.) DOZIER A. DeVANE,  
*United States District Judge.*

223

Plaintiff moves for entry of the above order.

(S.) STUART ROTHMAN,

*Solicitor.*

(S.) BEVERLEY R. WORRELL,

*Regional Attorney.*

(S.) H. GRADY KIRYEN,

*Attorney, United States Department of Labor.*

*Attorneys for Plaintiff.*

Defendants consent to entry of the above order.

CALDWELL, PARKER, FOSTER & WIGGINTON,

By (S.) JULIUS F. PARKER,

*Attorneys for Defendants.*

#### IN UNITED STATES DISTRICT COURT

SUPPLEMENTAL MEMORANDUM DECISION AND ORDER—Filed  
December 17, 1953

Defendant, King Edward Tobacco Company, has filed herein a motion to revise certain statements of facts contained in the Memorandum Decision herein, which will be considered and disposed of seriatim.

1. On page 5 of the memorandum decision defendant moves to delete the sentence "This drying process is repeated until the tobacco has reached a stage in the process of curing when it is ready for the packing house", and substitute in lieu thereof, "This drying process is continued until the tobacco is moved from the barn to the packing plant", or words to the same general effect.

The Court finds no appreciable difference in the meaning and effect of the language used in the memorandum decision and in the revision requested by counsel for defendant and the motion in this respect is denied.

2 Counsel for defendant also moves the Court to delete from page ~~2~~ 7 the following sentence: "When the tobacco reached the stage in the process of curing when it was ready for the packing house the King Edward Tobacco Company took it to one of its packing houses where no other tobacco was processed and made ready for market", and substitute in lieu thereof, "When the tobacco is moved from the barn it is taken to one of the packing plants of King Edward Tobacco Company in which the tobacco of no other grower is handled", or words to the same general effect.

The Court finds no factual difference in the meaning and effect of the language used in the memorandum decision and in the revision requested by counsel for defendant. Each correctly state the facts, but the Court will adhere to the language used in the memorandum decision and the motion in this respect is also denied.

41. Counsel for defendant further moves the Court to delete the words, "The packing houses are equipped with machinery 225 for the appropriate humidification and curing of the tobacco", appearing on page ~~2~~ 5, upon the ground there is no evidence or showing that the packing plants are equipped with machinery.

This statement may be accurate as to the case made out by King Edward Tobacco Company, but upon the whole record before the Court it clearly and very definitely appeared that the packing houses are equipped with machinery for the appropriate humidification and curing of the tobacco and no harm is done to King Edward Tobacco Company case by retaining this language in the memorandum decision. Motion to delete is therefore denied.

III. Counsel for defendant further moves the Court to delete words appearing near the bottom of page ~~2~~ 7 as follows: "and defendant concedes that these packing houses operations are subject to the Act", on the ground that the affidavits or evidence hereon do not show that defendant "concedes" or admits that such operations "are subject to the Act", but such evidence shows at most that the defendant is not in violation of the Act at such other packing houses.

Obviously in cases of this character the Court has latitude in expressing in its own language what the facts in a case show. The facts in this case clearly established that defendant operates two other packing houses in the same area; that these packing houses are not involved in this litigation because they were found not to be in violation of the Act. While the Court could have used some word more pleasing to defendant than "concedes", the effect would have been the same and for this reason the 226 Court sees no necessity for amending the memorandum decision as requested. The motion to delete is denied.



IV and V. Counsel for defendant further moves the Court to add to the paragraph ending on page ~~26~~ immediately preceding the heading, "The Budd Case", the following:

"A majority of the employees who work on tobacco in the packing plant also work part of the time on the tobacco farms"

and in support thereof defendant has filed and requests the Court to receive and consider an affidavit of recent date filed herein by Robert F. Gardner, which shows that on October 21, 1953 at the height of the packing season of type ~~262~~ cigar leaf wrapper tobacco, a survey was made of the employees of the King Edward Tobacco Company present and working on that date in and about the packing plant involved in this suit and that 83 of the 93 employees present had worked continuously with this type of tobacco on some tobacco farm from the time of planting until the date of survey, including participation in the growing, harvesting and barn curing of such tobacco.

At the time of the trial it was repeatedly asserted by counsel for defendants and never denied by counsel for plaintiff that more than 50% of the employees who worked on tobacco in the packing plant also worked part of the time on the tobacco farms and this memorandum decision may be considered as a finding of this additional fact.

227 Counsel for plaintiff moves the Court to amend the memorandum decision heretofore filed herein by striking therefrom on page ~~29~~ thereof, the following:

"Having found and held that the farming exemption ends when the tobacco reaches the receiving platforms of the packing house it is unnecessary to consider the relative scope and effect of Clauses (6) and (10) of Section 13(a) of the Act in this case," and substitute in lieu thereof, the following:

"The natural form in which the tobacco matures in the field has been substantially changed in the drying and redrying process before it reaches defendant's plants. Operations in the bulking houses constitute processing of a type not enumerated in Section 13(a) (10) and that Section, therefore, has no application to the employees there engaged in those operations."

The ground assigned for the change is that the proposed language is amply supported by the facts in this case and would eliminate any possible uncertainty as to the Court's ruling.

The Court is not convinced that anyone will be confused by the language used and further is unwilling to accept and approve the limited approach to the question at issue in this case suggested in the proposed language. Therefore, plaintiff's motion to amend is denied.



## The May Tobacco Company Case

228 When this case was presented to the Court, counsel for the parties and the Court were laboring under the impression that motions for summary judgment had been filed by plaintiff and defendant, May Tobacco Company, but it developed subsequently that neither plaintiff nor defendant had filed such motion. Each has now filed a motion for summary judgment with notice to the Court that no further hearing thereon is requested and the Court having considered said motions and being fully advised in the premises adheres to the decision heretofore reached in the May Tobacco Company case in its prior memorandum decision and pursuant thereto, it is

Ordered and Adjudged that intervenor's motion for summary judgment be and the same is hereby denied.

It is further Ordered and Adjudged that plaintiff's motion for summary judgment against the May Tobacco Company, Intervenor, be and the same is hereby granted.

Done and Ordered at Tallahassee, Florida, this 17th day of December, 1953.

U.S. DOZIER A. DEVANE,  
United States District Judge.

229 In United States District Court

JUDGMENT—Filed January 4, 1954

The above styled cause came on for hearing before this Court, sitting without a jury, on cross motions for summary judgment heretofore filed by the respective parties. Upon consideration of the pleadings and the stipulations, affidavits and other evidence filed herein and this cause having been submitted to the Court on the entire record and the arguments and briefs of counsel for the respective parties, and findings of fact and conclusions of law having been made and filed herein.

Now, therefore, sufficient cause therefor appearing and upon the findings of fact and conclusions of law contained in the memorandum decision filed herein and dated September 29, 1953 as amended, it is

Ordered, Adjudged and Decreed that the defendants, Joseph T. Budd, Jr., and Florence W. Budd, copartners, doing business as J. T. Budd, Jr., and Company, their agents, servants, employees, attorneys and all persons acting, or claiming to act, in their behalf and interest, be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 15(a) (1), 15(a) (2) and 15 (a) (5) of the Fair Labor Standards Act of 1938

as amended (Act of June 25, 1938, 52 Stat. 1060, as amended by 63 Stat. 910, U.S.C. Ti. 29, Sec. 201, et seq.), hereinafter referred to as the Act, in any of the following manners:

230 (1) The defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who are engaged in the production of goods for interstate commerce, as defined by the Act, wages at rates less than seventy-five (75) cents and four.

(2) The defendants shall not, contrary to Section 15(a)(1) of the Act, ship, deliver, transport, offer for transportation or sell in interstate commerce, as defined by the Act, or ship, deliver or sell with knowledge that shipment, delivery or sale thereof in interstate commerce is intended, any goods in the production of which any employee of the defendants has been employed at rates of pay less than those specified in paragraph (1) of this judgment.

(3) The defendants shall not fail to make, keep and preserve records of their employees, and the wages, hours and other conditions and practices of employment maintained by them, as prescribed by the regulations of the Administrator issued, and from time to time amended, pursuant to Section 11(c) of the Act and found in Title 29, Chapter V, Code of Federal Regulations, Part 516.

It is further Ordered that nothing in this judgment shall be construed to prevent the shipment, delivery or sale by defendants in interstate commerce of any goods which they may now have on hand in the production of which any of their employees may have heretofore been employed in violation of Section 6 of the Act.

231 It is further Ordered that costs be, and they hereby are, taxed against the defendants for which execution may issue.

Dated this 30th day of December, 1953.

(S.) Dozier A. DeVane, United States District Judge.

In United States District Court

NOTICE OF APPEAL—Filed February 24, 1954

Notice is hereby given that Joseph T. Budd, Jr. and Florence W. Budd, co-partners, doing business as J. T. Budd, Jr. and Company, defendants in the above and foregoing action, appellants in the United States Circuit Court of Appeals, do hereby file this, their Notice of Appeal, and appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered herein on January 4, 1954, and duly recorded in Civil Order Book No. 4, at Page 4029, which said judgment is the final judgment in said cause, said appeal being taken within sixty (60) days from the entry of said final judgment as required by the Rules of Practice of this Court. Said Appeal is made returnable as provided by

law and the Clerk is hereby requested to give notice hereof forthwith.

CALDWELL, PARKER, FOSTER  
& WIGGINTON

By (S.) JULIUS F. PARKER,  
*Attorneys for Defendants.*

232-234 Certificate of Service (omitted in printing)

Cost bond on appeal for \$250.00 filed February 24, 1954, omitted in printing.

235 In United States District Court

MOTION TO STAY INJUNCTION PENDING APPEAL—Filed February 24, 1954.

Come now defendants, Joseph T. Budd, Jr. and Florence W. Budd, co-partners, doing business as J. T. Budd, Jr. and Company, and pray for an order staying the permanent injunction granted herein by the final order of this Court dated December 30th, 1953, and entered herein on January 4, 1954, during the pendency of the appeal taken from said final order to the Fifth Circuit Court of Appeals.

Dated this 24th day of February, 1954.

CALDWELL, PARKER, FOSTER  
& WIGGINTON

By (S.) JULIUS F. PARKER,  
*Attorneys for Defendants.*

Certificate of Service (omitted in printing)

In United States District Court

ORDER GRANTING MOTION TO STAY INJUNCTION PENDING APPEAL—  
Filed and entered February 24, 1954

This cause came on to be heard upon motion of the defendants, Joseph T. Budd, Jr. and Florence W. Budd, co-partners, doing business as J. T. Budd, Jr. and Company, for an order staying the permanent injunction granted herein by final judgment of this Court dated December 30, 1953, and entered herein January 4, 1954, during the pendency of appeal taken from said final judgment to the Court of Appeals for the Fifth Circuit, and good cause appearing therefor, it is

237 Ordered that a stay of said permanent injunction and final judge

ment is hereby allowed, without additional bond, during the pendency of said appeal.

Dated at Tallahassee, Florida, February 24th, 1954.

(S.) DOZIER A. DEVANE,  
*United States District Judge.*

In United States District Court

POINTS TO BE RELIED UPON ON APPEAL—Filed March 2, 1954

1. The Court erred in the entry of its judgment against the Appellants in this cause;

2. The Court erred in holding that the Appellants and their employees are covered by the Fair Labor Standards Act, or any part thereof;

3. The Court erred in holding the farming exemption as to Type 62 tobacco ends when it reaches the receiving platform of a packing house for processing and packing purposes.

238-242 4. The Court erred in refusing to hold that the Appellants and their employees, and the employees of the farmers described in the Appellants' respective admissions, were not covered by the Fair Labor Standards Act.

Respectfully submitted,

CALDWELL, PARKER, FOSTER  
& WIGGINTON,

By (S.) JULIUS F. PARKER,

*Attorneys for Defendants.*

Certificate of Service (omitted in printing).

APPELLANTS' DIRECTIONS TO THE CLERK FOR PREPARING TRANSCRIPT OF THE RECORD—Filed March 2, 1954 (omitted in printing)

243-244 APPELLEE'S DESIGNATION OF ADDITIONAL CONTENTS OF RECORD ON APPEAL—Filed March 15, 1954 (omitted in printing)

245 Clerk's Certificate to foregoing transcript omitted in printing.

246 MINUTE ENTRY OF ARGUMENT AND SUBMISSION—January 31, 1955 (omitted in printing)



247 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH  
CIRCUIT

No. 15016

JOSEPH T. BUDD, JR., AND FLORENCE W. BUDD, CO-PARTNERS, DOING  
BUSINESS AS J. T. BUDD, JR., AND COMPANY, APPELLANTS,*versus*JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPART-  
MENT OF LABOR, APPELLEE

AND

No. 15071

KING EDWARD TOBACCO COMPANY OF FLORIDA AND MAY TOBACCO  
COMPANY, INTERVENOR, APPELLANTS,*versus*JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPART-  
MENT OF LABOR, APPELLEE*Appeals from the United States District Court for the Northern  
District of Florida*

OPINION—April 15, 1955

248 Before HUTCHESON, Chief Judge, and RIVES and TUTTLE,  
— Circuit Judges

RIVES, Circuit Judge: The opinion of the district Court in these cases is reported at 114 F. Supp. 865. The Budd case<sup>2</sup> was the action first brought by the Secretary of Labor under Section 17 of the Fair Labor Standards Act<sup>1</sup> to enjoin the Budds from violating the minimum wage and record keeping provisions of the Act. At the conclusion of a pre-trial conference on that case, the district court was of the opinion that the Budd company operation was in violation of the Act, but, in order to avoid putting the small farmers, whose tobacco was processed by the Budds, at an economic disadvantage to the operators who processed their own tobacco exclusively, the court insisted that before decision in the Budd case, the issues be broadened to include such large operations.

<sup>1</sup> Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U.S.C.A. 201, et seq., as amended by the Fair Labor Standards Amendments of 1949, c. 736, 63 Stat. 910.



Accordingly, suit was brought against the King Edward Company and the May Company intervened.

The cases involve the definition of "Agriculture" under Title 29 U.S.C.A. Section 203(f),<sup>2</sup> the agricultural exemptions under Section 213(a), clauses 6 and 10,<sup>3</sup> and incidentally the exemption from the maximum hours provision under Section 207(c).<sup>4</sup>

<sup>2</sup> "(f) 'Agriculture' includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 1441j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market."

<sup>3</sup> "§. 213. *Exemptions*

"(a) The provisions of sections 206 and 207 of this title shall not apply with respect to \* \* \* \* \* (6) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a share-crop basis, and which are used exclusively for supply and storing of water for agricultural purposes; \* \* \* \* \* (10) any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; \* \* \* \* \*

<sup>4</sup> "§ 207. *Maximum hours*"

"(c) In the case of an employer engaged in the first processing of milk, buttermilk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into sirup, the provisions of subsection (a) of this title shall not apply to his employees in any place of employment where he is so engaged; and in the case of an employer engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables, or in the first processing, within the area of production (as defined by the Administrator), of any agricultural

All of appellant's processing operations are in connection with U.S. Type 62 Sumatra tobacco, which is a leaf tobacco grown and used entirely for cigar wrappers. This type of tobacco is grown exclusively in three counties in North Florida, and two counties in South Georgia, contiguous to two of said Florida counties. Most of such tobacco is grown within an airline radius of thirty miles of Quincy, the County Seat of Gadsden County, Florida.

We quote from the opinion of the district court:

"Method of Growing, Harvesting and Marketing Type 62 Shade Leaf Tobacco

"Type 62 shade leaf tobacco requires special and painstaking cultivation, harvesting, curing and preparation for market. It grows in fields inclosed in a cheesecloth shade, which completely covers and incloses the tobacco field. The cheesecloth is supported by wires strung on posts placed at regular intervals through the fields. It is highly fertilized and intensively cultivated during the growing period. When each leaf reaches a certain stage of maturity it is promptly harvested. This harvesting process is known as 'priming'. The lower leaves are picked first, perhaps not more than two or three from each stalk. This picking is repeated as the tobacco matures on up the stalk until all the marketable leaves have been removed. At each priming the tobacco is immediately taken to a tobacco barn located on the farm where it is strung on sticks and dried by means of heat. When the tobacco is almost completely dried the drying process is interrupted and it is permitted to absorb moisture and again dried. This drying process is repeated until the tobacco has reached a stage in the process of curing when it is ready for the packing house.

"It is then taken from the barns in the field, placed in appropriate containers and carried to the packing house where it is placed in piles known as 'bulks' for curing. Each bulk consists of more than 3000 lbs. of tobacco. The packing houses are equipped with machinery for the appropriate humidification and curing of the tobacco. During the curing period the temperature within each bulk is closely watched from day to day and regular intervals, when the appropriate time has arrived,

— or horticultural commodity during seasonal operations, or in handling, slaughtering, or dressing poultry or livestock, the provisions of subsection (a) of this title, during a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, shall not apply to his employees in any place of employment where he is so engaged."

the bulk is broken up, the tobacco leaves shaken out and those on the outside placed on the inside of the new bulk and those on the inside placed on the outside for further curing.

251 The process is continued until the tobacco is ready for market when it is baled (sief for shipment). *Durking v. Budd*, 114 F. Supp. 865, 866-867.

After such processing, this type tobacco falls into eight main classifications, and none of those classifications can be determined prior to the processing. Primarily, because it cannot be graded until it has been processed, there is no market at an earlier stage for this type tobacco. The market variation dependent upon grading is considerable, ranging from a high of approximately \$2.40 per pound down to as low as \$.40 per pound.

Some 300 farmers in the Quincy area grow this type of tobacco with about 80% growing and harvesting less than 25 acres per year, and a majority producing only 1½ to 10 acres per year. As has been noted, the natural heating, fermentation, and curing of this tobacco requires bulks of more than 3000 lbs. of tobacco. The small farmers do not grow the tobacco in such quantities, and hence, cannot process their own tobacco. For the year 1950, some 52 of such small farmers cultivating a total of 263 acres had their tobacco processed by the Budd Company. That company grows no tobacco of its own but processes tobacco grown by others.

During 1950, the King Edward Tobacco Company cultivated 206 acres, and the May Company 90 acres of this type tobacco, and those two companies processed their own tobacco, and did not handle the tobacco of any other person at the packing houses here involved. Those packing houses are located in the town of Quincy, which, according to the 1950 census had, a population of 6,586, and the Budds' packing house is also in that town. At the height of the packing season, May employs approximately 70 employees in its packing plant, King Edward some 120 employees, and Budd approximately 108 employees. The majority of all such employees work also on the farms when not engaged in work at the packing plants. Other pertinent facts appear in the opinion of the district court.

King Edward and May claim that their employees are exempt from the provisions of the Act under Section 213 (a)(6) because they are employed in agriculture. As to King Edward and May, the appellee concedes that:

"Appellants are admittedly 'farmers' in their growing operations, and admittedly the mere fact that they are large growers does not affect the availability of the exemption to them inso-



far as they are in fact farmers.<sup>5</sup> But obviously appellants are also something else in addition to being growers—they are also operating separate and extensive commercial enterprises, of the same character as similar independently owned and operated packing houses.<sup>6</sup>

The district court held "that upon the record in this case the farming exemption ends when the tobacco reaches the receiving platform of the packing house . . . ." 114 F. Supp. 868. We cannot agree. It seems clear to us that a farmer cannot function without a market, that everything done by these farmers was essential for the marketing of their crops, and that the work of their packing house employees<sup>7</sup> in the preparation for market of the leaf grown exclusively on their farms, constitutes "practices performed by a farmer as an incident to or in conjunction with such farming operations, including preparation for market," within the meaning of Section 203(f).<sup>8</sup>

All of the appellants claim that their employees are exempt from the Act by virtue of Section 213(a)(10). [see footnote 3, supra], because their operations are one of those enumerated in that section and necessary for the marketing of their crops, and because the Administrator exceeded his authority in excluding from the "area of production", "any city, town or urban place of 2,500 or greater population." Appellee concedes, as it must, that this Circuit has already held that the Administrator did so exceed his authority.<sup>9</sup> Appellee insists, however, that after it reached the packing house, the tobacco was no longer an "agricultural or horticultural commodity", and that the processing operation was not one of those enumerated in the section. The legislative history of Section 213(a)(10) makes clear that its primary purpose was

<sup>5</sup> See *Addison v. Holly Hill Fruit Products Co., Inc.*, 322 U.S. 607, 614, 615; *N.L.R.B. v. John W. Campbell, Inc.*, 5th Cir., 159 F. 2d 184, 187; *Waialua Agricultural Co. v. Maneja*, 9th Cir., 216 F. 2d 466, 474-475.

<sup>6</sup> See *Farmers Irrigation Co. v. McComb*, 337 U.S. 755; *Addison v. Holly Hill Fruit Products Co., Inc.*, 322 U.S. 607; *N.L.R.B. v. John W. Campbell, Inc.*, 5th Cir., 159 F. 2d 184, 187; *Waialua Agricultural Co. v. Maneja*, 9th Cir., 216 F. 2d 466; *American Sumatra Tobacco Corp. v. Tone*, (Conn.) 15 Atl. 2nd 80.

<sup>7</sup> *Jenkins v. Durkin*, 5th Cir., 208 F. 2d 941; *Loyvorn v. Miller*, 5th Cir., 215 F. 2d 601. Cf. *Tobin v. Traders Compress Co.*, 10th Cir., 199 F. 2d 8. It seems particularly clear that the Administrator did exceed his authority as to the area of production involved in this particular case.

to prevent discrimination against the small farmer. When  
 254 it is considered that admittedly the processing was essential  
 for the marketing of the tobacco, again it seems clear to us  
 that the employees of all of the appellants are exempt under Sec-  
 tion 213(a)(10). Since we are of the opinion that the employees  
 are exempt under Section 213(a)(10), we do not feel called upon to  
 255 discuss the respective fields of operation of the total ex-  
 emption in that section and of the partial exemption in  
 Section 207(c) further than to say that we agree with the  
 Ninth Circuit that such exemptions overlap and are not alternative.

Mr. Schwollenbach. If we leave the bill the way  
 it now stands, it is going to mean that the large producer on the  
 large ranch who can afford to maintain the equipment on his  
 own ranch is going to have an unfair advantage over the small man  
 who has only 5 to 10 acres, and who has to send his crop to a cen-  
 tral warehouse, or who may join with others in a cooperative ware-  
 house, and there have the same processes performed." 81 Cong. Rec.  
 7659.

"But it seems that, so long as they remain in their natural state  
 and all of the work that is done upon them is the ordinary agri-  
 cultural operation up to the point of processing, whether they are  
 handled on the farm or by a group of men gathered together in a  
 cooperative, or turned over to a central warehouse, they should be  
*exempt, because of the fact that if we do not exempt them, we are*  
*giving the large producer a very distinct advantage over the small*  
*producer, and I am certain it is not the purpose of the bill and is*  
*not within the economic theory of the bill to give the large producer*  
*an advantage over the small producer."* (Emphasis supplied.) 81  
 Cong. Rec. 7660.

Mr. Schwollenbach. The amendment is very strictly drawn in  
 an effort to limit the operations defined therein purely to those of an  
 agricultural nature \* \* \*. In other words, in a small apple opera-  
 tion of 5 or 10 or 15 or 20 acres, it is not possible for the owner of the  
 ranch to purchase and maintain on the ranch the necessary machin-  
 ery which is required in the washing operation under the rules and  
 regulations of the Department of Agriculture. It is not possible for  
 him to provide on his ranch the necessary storage space to store the  
 apples until such time as it is possible to take them to market. It is  
 not possible on the small ranch to supply the space for packing the  
 apples. Therefore, it is necessary for such a farmer either to join  
 other farmers in a cooperative, or to send his apples to a packing  
 house, and have these operations, which are purely agricultural oper-



or mutually exclusive. *Washoe Agricultural Co. v. Mayo*, 903 Cir. 178 F.2d 603, 609.<sup>29</sup>

Appellee insists, however, that Section 213(a)(10) is inoperative until the Administrator makes a valid definition of the area of production. That much may be granted, but in a case like this, otherwise within the exemption, and which might likely fall with a valid definition of the area of production, the appellee is in no position to seek the equitable remedy of injunction until such definition has been made.<sup>30</sup>

The judgments are, therefore, reversed and the causes remanded with directions to enter judgments for the defendants, and for the intervenor, May Company.

ations, performed elsewhere than at the situs of the ranch or the farm.

*"The purpose of this amendment is to give protection against that situation, and to make it possible for the small fruit and vegetable producer to operate upon the same basis as the large fruit and vegetable producer."* (Emphasis supplied.) 81 Cong. Rec. 7876.

*"In other words, the small producer cannot afford to have the capital investment in the warehouse, the washing machinery, all of the necessary incidentals to this operation, while the larger producer can afford them, and he is exempt from the provisions of the bill."* 81 Cong. Rec. 7877.

*"The purpose of the amendment is not for the protection of the packing plant or for the protection of the owners of the packing plant. The cost is paid by the producer. These packing plants just pass the cost back to the man who produces the apples. The farmer pays the bill. The purpose of the amendment is to permit the small farmer, who cannot afford to have his own warehouse and cannot afford to have his own washing machine, to be placed upon a parity with the larger producers, who can afford to maintain their own warehouses and their own washing machines and their own equipment."* (Emphasis supplied.) 81 Cong. Rec. 7877.

See also, the dissenting opinion in *Addison v. Holly Hill Co.*, 322 U.S. 607, at p. 633.

<sup>29</sup> See *Fleming v. Farmers Peanut Co.*, 5th Cir. 128 F.2d 404, cf. *Puerto Rico Tobacco Marketing Coop. Ass'n v. McComb*, 1st Cir. 181 F.2d 697.

<sup>30</sup> See *Messenger v. Traders Compress Co.*, D.C., E. Dist. Okla., 107 F.Supp. 354, 360; *Walling v. McCracken County Peach Growers Ass'n*, D.C. W. Dist. Ky., 50 F.Supp. 900, 905, 906.

No. 15016

JOSEPH T. BUDD, JR. AND FLORENCE W. BUDD, CO-PARTNERS, DOING  
BUSINESS AS J. T. BUDD, JR. AND COMPANY,

*versus*

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES  
DEPARTMENT OF LABOR,

JUDGMENT—April 15, 1955

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court with directions to enter judgment for the defendants.

257 Clerk's Certificate to foregoing transcript omitted in printing.

258-259 Supreme Court of the United States

No. —, OCTOBER TERM, 1955

[Title omitted]

# ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

It is ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 1, 1955.

HUGO L. BLACK,

Associate Justice of the Supreme  
Court of the United States.

Dated this 8th day of July, 1955.

260

Supreme Court of the United States

No. 278, OCTOBER TERM, 1955

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.